

EXHIBIT 6

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : C.A. No. 15-120 (JJF) 4 DOBRICH, Individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH, : 7 SAMANTHA DOBRICH, JANE DOE : 8 and JOHN DOE, Individually : 9 and as parents and next : 10 friend of JORDAN DOE and : 11 JAMIE DOE, : 12 13 Plaintiffs, : 14 15 v. : 16 17 INDIAN RIVER SCHOOL : 18 DISTRICT, et al., : 19 20 Defendants. : 21 22 Videotaped Deposition of JOHN M. EVANS, 23 taken pursuant to notice, on Wednesday, October 18, 24 2006 at 9:13 a.m. at 31 Hosier Street, Selbyville, 25 Delaware, reported by Lorena J. Hartnett, a Registered 26 Professional Reporter and Notary Public. 27 28 APPEARANCES: 29 THOMAS ALLINGHAM, ESQUIRE 30 RICHARD HORVATH, ESQUIRE 31 BRIAN LENHARD, ESQUIRE 32 One Rodney Square 33 Wilmington, DE 19801 34 Attorney for the Plaintiff 35 36 37 WILCOX & FETZER 38 1330 King Street - Wilmington, DE 19801 39 (302) 655-0477 40 www.wilfet.com</p>	<p>3 1 2 3 TABLE OF CONTENTS 4 TESTIMONY OF JOHN M. EVANS: 5 Direct Examination by Mr. Allingham. 3 6 Certificate of Reporter168 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p>2 1 2 APPEARANCES (CONTINUED): 3 JARROD SHAU, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>4 1 VIDEOGRAPHER: Okay. This is the 2 videotaped deposition of John M. Evans taken 3 by the plaintiffs in the matter of Dobrich 4 et al. versus Indian River School District, 5 et al., Civil Action Number 15-120. 6 The deposition is taking place at 31 7 Hosier Boulevard in Selbyville, Delaware, on 8 October 18, 2006 at approximately 9:13 a.m.. 9 The court reporter is Lorena Hartnett from 10 the firm of Wilcox and Fetzer. 11 My name is Mark Buckmaster, a video 12 specialist from Discovery Video Services 13 Incorporated in association with Wilcox and 14 Fetzer. Counsel will now introduce 15 themselves and the reporter will swear in 16 the witness. 17 MR. ALLINGHAM: My name is Tom 18 Allingham. I represent the plaintiffs, and 19 with me are Richard Horvath and Brian 20 Lenhard. 21 MR. SHAU: My name is Jarrod Shaw, and 22 I represent the defendants. 23 24</p>

<p>9</p> <p>1 Q. It then follows as the night to day that it</p> <p>2 had no bearing?</p> <p>3 A. It had no bearing on my decision. I was not</p> <p>4 aware of that.</p> <p>5 Q. Had you attended any board meetings prior to</p> <p>6 your decision to run for the board?</p> <p>7 A. One, one board meeting.</p> <p>8 Q. And was that a board meeting on the expense</p> <p>9 referendum?</p> <p>10 A. No, that was later. I don't think -- No, I</p> <p>11 don't think it was.</p> <p>12 Q. Why did you attend that board meeting?</p> <p>13 A. Just to get a feel for what happened at a</p> <p>14 board meeting.</p> <p>15 Q. Did you think that the meeting that you</p> <p>16 attended before you joined the board was conducted in</p> <p>17 a solemn and serious and appropriate manner?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Did you form a view as to whether the opening</p> <p>20 of that meeting with a prayer was responsible for that</p> <p>21 meeting's being conducted in a solemn, serious and</p> <p>22 appropriate manner?</p> <p>23 A. I don't remember whether that board meeting</p> <p>24 was opened to prayer or not. I don't remember that.</p>	<p>11</p> <p>1 Q. And it is also correct, is it not, that the</p> <p>2 board does not open its executive sessions with a</p> <p>3 prayer?</p> <p>4 A. That's correct.</p> <p>5 Q. And that question having to do with executive</p> <p>6 sessions, that's true even if the executive session</p> <p>7 takes place before the prayer that's offered at the</p> <p>8 regular meeting; correct?</p> <p>9 A. Sorry, repeat that question.</p> <p>10 Q. Let me make it into two questions. First of</p> <p>11 all, do you recall that there have been times when the</p> <p>12 board goes into executive session before any prayer is</p> <p>13 offered at the regular meeting?</p> <p>14 A. That's correct.</p> <p>15 Q. And even at those, if you will, pre-prayer</p> <p>16 executive sessions, the board does not open those</p> <p>17 sessions with a prayer; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Do you know why?</p> <p>20 A. No, I never really thought about it, to be</p> <p>21 honest.</p> <p>22 Q. Do you know why the board does not open its</p> <p>23 special meetings with a prayer?</p> <p>24 A. No, I don't.</p>
<p>10</p> <p>1 Q. I take it it did not make a big impression on</p> <p>2 you one way or another as a member of the public at</p> <p>3 that meeting?</p> <p>4 A. It did not, no. I just don't remember</p> <p>5 whether they opened that meeting with prayer or not.</p> <p>6 Q. Am I right, Mr. Evans, that you don't have</p> <p>7 any personal information prior to, for the period</p> <p>8 prior to your joining the board, about whether the</p> <p>9 board had a practice or policy of opening meetings</p> <p>10 with a prayer?</p> <p>11 A. I had no knowledge whether they did or did</p> <p>12 not.</p> <p>13 Q. Okay, now let's go to the ten years that you</p> <p>14 did serve on the board. Is it correct that the board</p> <p>15 had a practice or policy of opening its meetings with</p> <p>16 a prayer?</p> <p>17 A. Yes.</p> <p>18 Q. And that would be its regular meetings;</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. It's also correct, is it not, that the board</p> <p>22 did not have a practice of opening its special</p> <p>23 meetings with a prayer?</p> <p>24 A. That's correct.</p>	<p>12</p> <p>1 Q. The matters treated in executive session and</p> <p>2 at special meetings are just as important as the</p> <p>3 matters treated at regular meetings, aren't they?</p> <p>4 A. Yes, they are.</p> <p>5 Q. The proceedings are conducted in just as</p> <p>6 solemn a manner at special meetings as at regular</p> <p>7 meetings, is that correct, in your experience?</p> <p>8 A. Yes, I would say yes.</p> <p>9 Q. And the executive sessions, similarly, are</p> <p>10 just as serious and solemn as the regular sessions?</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever heard anyone at anytime raise</p> <p>13 the issue of why executive sessions and special</p> <p>14 meetings are not opened with a prayer?</p> <p>15 A. No, I have never, never heard that issue.</p> <p>16 Q. Okay. What did you do to prepare for the</p> <p>17 deposition today?</p> <p>18 A. The only thing that I did was about a week</p> <p>19 ago read the policy on religion.</p> <p>20 Q. Seems like a sensible thing to do.</p> <p>21 A. That's the only thing I have done to prepare.</p> <p>22 Q. Did you meet with your lawyers?</p> <p>23 A. Personally, you mean with the district</p> <p>24 lawyers?</p>

<p style="text-align: right;">41</p> <p>1 Q. Is it your view, as a board member, that the</p> <p>2 words "in order to solemnify its proceedings" are the</p> <p>3 functional equivalent of the words "in order to seek</p> <p>4 God's guidance for the decisions to be made at that</p> <p>5 meeting."?</p> <p>6 A. I believe that, yes.</p> <p>7 Q. Okay. And I forgot to say at the beginning</p> <p>8 of the deposition, it's really important for the court</p> <p>9 reporter, in particular, that we don't trample on each</p> <p>10 other's questions and answers. It's the way we all</p> <p>11 have conversations, but we need to have a specialized</p> <p>12 sequential conversation in the depositions. Okay?</p> <p>13 A. I understand.</p> <p>14 MR. ALLINGHAM: So could I have the</p> <p>15 last question and answer read back?</p> <p>16 (The reporter read back the last</p> <p>17 question and answer.)</p> <p>18 BY MR. ALLINGHAM:</p> <p>19 Q. Okay. So that at least at, for your</p> <p>20 understanding as a board member of the Policy BDA.1</p> <p>21 which we have in front of us, it doesn't matter</p> <p>22 whether the policy says, "In order to solemnify its</p> <p>23 proceedings" or whether the policy says, "in order to</p> <p>24 seek God's guidance, will, protection and grace," the</p>	<p style="text-align: right;">43</p> <p>1 Q. And what prompted the board's consideration</p> <p>2 of that issue was Mrs. Dobrich's expression of</p> <p>3 concerns that began with the graduation prayer in</p> <p>4 early summer of 2004; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let me show you what we have marked as</p> <p>7 PX15. When I say PX, it's short for plaintiff's</p> <p>8 exhibit.</p> <p>9 A. Okay.</p> <p>10 Q. When we do that, that enables someone looking</p> <p>11 at the transcript to be able to reconstruct what</p> <p>12 document we were looking at.</p> <p>13 If you look at the last page of PX15, you</p> <p>14 will see Mrs. Hobbs' signature. Actually, it's a</p> <p>15 signature stamp, but it's meant to be Mrs. Hobbs'</p> <p>16 signature; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And does that tell you that these are the</p> <p>19 final minutes of the June 15, 2004 board meeting?</p> <p>20 A. Yes.</p> <p>21 Q. All right. You are recorded as being present</p> <p>22 under roll call on the first page?</p> <p>23 A. Yes, I am.</p> <p>24 Q. And do you recall that you were present at</p>
<p style="text-align: right;">42</p> <p>1 meaning would be the same?</p> <p>2 A. Yes, to me it would.</p> <p>3 Q. Okay. Did anyone suggest at anytime in the</p> <p>4 consideration of this policy that the policy ought to</p> <p>5 say, "in order to seek God's guidance, will,</p> <p>6 protection and grace."?</p> <p>7 A. I don't remember.</p> <p>8 Q. Do you remember any discussion at all of the</p> <p>9 purpose articulated in the board prayer policy, that</p> <p>10 is, quote, "in order to solemnify its proceedings."?</p> <p>11 A. Would you repeat that, please?</p> <p>12 Q. Yes, do you remember anyone discussing the</p> <p>13 purpose of the policy at anytime during the board</p> <p>14 meetings?</p> <p>15 A. I don't recall, no, I don't recall.</p> <p>16 Q. Let's make my question a little more</p> <p>17 specific. Do you recall anyone offering any comment</p> <p>18 whatsoever on the language, "in order to solemnify its</p> <p>19 proceedings"?</p> <p>20 A. I don't recall.</p> <p>21 Q. When did the board first, first begin to</p> <p>22 consider the issue of school board prayer?</p> <p>23 A. When it began to first consider it? It would</p> <p>24 have been sometime in the summer of 2004.</p>	<p style="text-align: right;">44</p> <p>1 the June 15, 2004 school board meeting at North</p> <p>2 Georgetown Elementary School in the cafeteria?</p> <p>3 A. Yes.</p> <p>4 Q. Now, this would have been the first board</p> <p>5 meeting after the 2004 graduation; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. If you will turn to page two of the minutes,</p> <p>8 you will see under the public comments section that</p> <p>9 one person made a public comment, and that's</p> <p>10 Mrs. Dobrich; is that right?</p> <p>11 A. Yes, I see that.</p> <p>12 Q. And what the minutes record is that</p> <p>13 "Mrs. Dobrich, a parent of the Jewish faith, expressed</p> <p>14 concern about prayers at the school district events.</p> <p>15 She asked that the board consider using a</p> <p>16 nondenominational prayer that would be appropriate for</p> <p>17 all faiths at events such as graduations, etcetera."</p> <p>18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Do you recall Mrs. Dobrich making that</p> <p>21 comment?</p> <p>22 A. I recall Mrs. Dobrich being there, but I</p> <p>23 can't recall her specific statement, but I assume the</p> <p>24 board minutes would record such.</p>

<p>53</p> <p>1 Mrs. Dobrich and mouthing the words, "No, never." Not</p> <p>2 saying them out loud, but saying "No, never," with</p> <p>3 your lips?</p> <p>4 A. No, I don't.</p> <p>5 Q. Do you recall not doing that?</p> <p>6 A. No, I don't.</p> <p>7 Q. That is, do you have an affirmative memory</p> <p>8 that you did not do that?</p> <p>9 A. No, I don't have any memory of what I did or</p> <p>10 didn't do.</p> <p>11 Q. Now, you said that you did not agree with</p> <p>12 Mrs. Dobrich's suggestion that the board use a</p> <p>13 nondenominational prayer that would be appropriate for</p> <p>14 all faiths. Would you tell me why you did not agree</p> <p>15 with that?</p> <p>16 A. Well, I don't agree with it. I can't</p> <p>17 speak -- I am not speaking for the board. I am</p> <p>18 speaking for myself.</p> <p>19 Q. Well --</p> <p>20 A. I can't agree with anyone that tells me how I</p> <p>21 should pray.</p> <p>22 Q. All right, and I want to separate your</p> <p>23 reaction as an individual and a person of faith with</p> <p>24 your reaction as a board member. They may be the</p>	<p>55</p> <p>1 have heard some testimony on this issue. Is that</p> <p>2 because, Mr. Evans, according to your beliefs,</p> <p>3 if you are asked to pray, you should offer the prayer</p> <p>4 in the name of Jesus?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And, to expand on that a little bit,</p> <p>7 is it also your belief that if you pray without</p> <p>8 offering the prayer in the name of Jesus, you would be</p> <p>9 denying Jesus?</p> <p>10 A. I believe that, yes.</p> <p>11 Q. Yes, sir. But, as you said earlier, you</p> <p>12 could accept a board policy that said no prayer should</p> <p>13 be offered in the name of Jesus by simply declining</p> <p>14 the invitation to pray?</p> <p>15 A. Repeat that, please.</p> <p>16 Q. You articulated a way that you could comply</p> <p>17 with the board policy that says no prayers shall be</p> <p>18 offered in the name of Jesus by simply declining the</p> <p>19 invitation to pray?</p> <p>20 A. If there was such a policy, I could accept</p> <p>21 it, but I would decline to pray.</p> <p>22 Q. And am I correct, sir, that in that</p> <p>23 circumstance, in order to seek divine guidance for</p> <p>24 yourself, according to your own faith, you would pray</p>
<p>54</p> <p>1 same, but I just want to make sure I understand. As a</p> <p>2 board member, did you disagree with what Mrs. Dobrich</p> <p>3 was suggesting?</p> <p>4 A. No, I did not disagree with her asking the</p> <p>5 board to consider it.</p> <p>6 Q. As a board member, after consideration of</p> <p>7 that issue, I take it that you disagreed with that</p> <p>8 suggestion; correct?</p> <p>9 A. With Mrs. Dobrich's suggestion?</p> <p>10 Q. Yes, ma'am, yes, sir, it's Dobrich, but yes,</p> <p>11 with Mrs. Dobrich's suggestion.</p> <p>12 A. Dobrich. Did I disagree with her suggestion?</p> <p>13 Q. Yes.</p> <p>14 A. Now, are you asking, is this -- it's hard</p> <p>15 to -- Well, ask me the question again, please.</p> <p>16 Q. Sure. Mrs. Dobrich suggested that the board</p> <p>17 offer prayers not in Jesus's name. Okay, as a board</p> <p>18 member, did you disagree with Mrs. Dobrich on that</p> <p>19 point?</p> <p>20 A. I can't answer that with a yes or no. If I</p> <p>21 am asked, if the board chose to not use the name of</p> <p>22 Jesus, then I would adhere to that, but I would</p> <p>23 request that I not be asked to pray.</p> <p>24 Q. And is that -- I may have this wrong, but I</p>	<p>56</p> <p>1 silently for divine guidance in Jesus's name; correct?</p> <p>2 A. I very possibly would.</p> <p>3 Q. It's certainly a way in which you could,</p> <p>4 according to your faith, effectively seek divine</p> <p>5 guidance?</p> <p>6 A. That's right, yes.</p> <p>7 Q. Because, according to your faith, God hears</p> <p>8 our prayers whether they are offered out loud or</p> <p>9 silently?</p> <p>10 A. That's correct.</p> <p>11 Q. And whether they are offered in public or in</p> <p>12 private?</p> <p>13 A. That's correct.</p> <p>14 Q. In church or in a supermarket?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay.</p> <p>17 A. That's what I believe.</p> <p>18 Q. In light of what you have just told me, is it</p> <p>19 necessary for the board to pray in public at a board</p> <p>20 meeting in order for it to accomplish its purpose of</p> <p>21 solemnifying the proceedings, which you have told me</p> <p>22 means to seek divine guidance?</p> <p>23 A. You asked is it necessary?</p> <p>24 Q. Correct.</p>

<p>61</p> <p>1 which the board member said, "Please, God, touch each 2 of the board members with your guidance during their 3 decision-making process at the meeting tonight," would 4 that prayer be permitted or prohibited by paragraph 5 three? 6 A. Well, I think it would be permitted. 7 Q. But if the board member, the same board 8 member offered a prayer that said, "Please, God, touch 9 each board member with your salvation during the board 10 meeting today," that would be prohibited? 11 A. I believe so, yes. 12 Q. All right. So a prayer for guidance is 13 alright, but a prayer for salvation is prohibited? 14 A. Yes, I agree with that. 15 Q. How about this prayer? "Oh, Lord, imbue us 16 with the faith to know and serve you during our 17 decisions at this meeting." 18 A. "Dear Lord."? 19 Q. "Imbue us with the faith to know and serve 20 you." 21 A. "To know you and to serve you?" I don't 22 think that's appropriate. 23 Q. I am going to ask you later in the 24 deposition, Mr. Evans, about some other prayers,</p>	<p>63</p> <p>1 a little bit to see whether you would view it as 2 violative or permitted by paragraph three. 3 A. Uh-huh. 4 Q. In the course of deciding whether a prayer is 5 proselytizing or not, do you think that decision could 6 be affected by the individual faith of the person 7 making the decision? 8 A. Repeat that, please. 9 Q. Yeah, let me give you an example, and then I 10 will come back to a general question. Okay? I asked 11 you about some prayers that were at least intended to 12 be, and I think you heard them to be, Christian 13 prayers; correct? 14 A. Right. 15 Q. Do you think that the judgment of whether 16 those prayers are proselytizing or not might be 17 affected by whether the person making that decision 18 was Christian or Jewish or Muslim? 19 A. Yes, I believe it would be affected. You 20 can't separate the two. 21 Q. So that a Christian might be more tolerant of 22 a -- Strike that. I am going to use the language of 23 the policy. 24 A Christian might view a prayer as</p>
<p>62</p> <p>1 as well, but I would like to ask you right now, as a 2 board member, how did you understand that paragraph 3 three would be enforced, the limitations in paragraph 4 three would be enforced? 5 A. How I understood it would be enforced? 6 Q. Yes, sir. 7 A. I don't know. I don't know how they would be 8 enforced. 9 Q. Is it correct that the board is ultimately 10 responsible for the enforcement of its policies? 11 A. Yes. 12 Q. In the course of your consideration of Board 13 Policy BDA.1, did you give any consideration to how 14 this policy would be enforced? 15 A. I did not, no. 16 Q. In the course of your consideration of Board 17 Policy BDA.1, did you hear anybody give consideration 18 as to the issue of how Board Policy BDA.1 would be 19 enforced? 20 A. I don't recall hearing anyone say, no. 21 Q. Mr. Evans, the perception of whether a prayer 22 is proselytizing or not, do you think that the 23 decision about that -- And you and I went through a 24 few prayers in which I kept changing the content of it</p>	<p>64</p> <p>1 non-proselytizing which a Jewish person might view as 2 proselytizing, same prayer; correct? 3 A. That's very possible, yes. 4 Q. And the difference might be grounded in the 5 faith of those two persons? 6 A. Well, I will use your words, yes, it might. 7 Q. It's certainly not unreasonable to think that 8 it might be affected by that faith; isn't that true? 9 A. That's true. 10 Q. The persons making the judgment whether a 11 prayer is proselytizing or not in the Indian River 12 School District, that is the individual board members, 13 have been at all times since the adoption of this 14 policy Christian in faith; is that correct? 15 A. Repeat that, please. 16 Q. First, the persons ultimately responsible for 17 enforcing paragraph three of the board policy are the 18 board members; is that correct? 19 A. That's correct. 20 Q. And is it correct that at all times since 21 October 19, 2004 when this policy was adopted, every 22 board member has been of the Christian faith? 23 A. I don't know that. 24 Q. Do you have any reason to doubt that?</p>

<p style="text-align: right;">109</p> <p>1 but I can only base it on that paragraph. If I have</p> <p>2 to exclude legal counsel, that's fine. I don't know</p> <p>3 that we had legal counsel. I am assuming that we did</p> <p>4 because I, as an individual, would not have linked</p> <p>5 those, as I mentioned before.</p> <p>6 Q. Okay. So let's take, as a given, your</p> <p>7 assumption for purposes of the next few questions.</p> <p>8 Okay?</p> <p>9 On the assumption that you had advice that</p> <p>10 since the Indian River Board of Education is a public</p> <p>11 legislative and deliberative body it has the right to</p> <p>12 open its meetings with a prayer, on that assumption</p> <p>13 you would agree with me, wouldn't you, that you took</p> <p>14 that legal advice into account in deciding whether to</p> <p>15 vote for the board policy?</p> <p>16 A. Yes, I would have.</p> <p>17 Q. If I then pursue that farther and say, we</p> <p>18 understand that you assume that you got such advice</p> <p>19 and so I ask you who gave you the advice, your answer</p> <p>20 is you don't know?</p> <p>21 A. That's correct.</p> <p>22 Q. And if I ask you whether you got advice from</p> <p>23 more than one source on that subject, legal advice</p> <p>24 from more than one source, you don't know?</p>	<p style="text-align: right;">111</p> <p>1 provided -- I don't think they provided anything on</p> <p>2 the prayer issue.</p> <p>3 Q. So your best recollection is that the</p> <p>4 differing advice came from Mr. Griffin and</p> <p>5 Mr. Neuberger?</p> <p>6 A. Yes, yes.</p> <p>7 Q. And now I want to ask you about the sequence</p> <p>8 in which you received that advice. Is it correct that</p> <p>9 you got the advice from Mr. Griffin first and then got</p> <p>10 advice from Mr. Neuberger second?</p> <p>11 A. That -- That may have been.</p> <p>12 Q. Is that your best recollection?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And you need to definitely pause before you</p> <p>15 answer this question, okay, because Mr. Shau may --</p> <p>16 You need to give Mr. Shau a chance to object.</p> <p>17 A. Okay.</p> <p>18 Q. Tell me, as well as you can recall, what the</p> <p>19 differences were between the advice Mr. Griffin gave</p> <p>20 you and the advice that Mr. Neuberger gave you?</p> <p>21 MR. SHAU: Object. The advice given</p> <p>22 by counsel is attorney/client privilege.</p> <p>23 Don't answer that question. I will instruct</p> <p>24 the witness not to answer the question,</p>
<p style="text-align: right;">110</p> <p>1 A. I don't know, but it's very possible.</p> <p>2 Q. Why is it very possible?</p> <p>3 A. Well, we had Mr. Neuberger and Mr. Griffin,</p> <p>4 there is two attorneys that both or neither may have</p> <p>5 given us the advice. I don't know.</p> <p>6 Q. Do you recall whether you got differing</p> <p>7 opinions on that topic from legal counsel?</p> <p>8 A. On the topic of school prayer, of our policy,</p> <p>9 or this paragraph?</p> <p>10 Q. This paragraph, that since the Indian River</p> <p>11 Board of Education is a public legislative and</p> <p>12 deliberative body, it has the right to open its</p> <p>13 meetings with a prayer.</p> <p>14 A. I don't recall if we had different opinions.</p> <p>15 I don't recall.</p> <p>16 Q. Did you get differing advice on the, more</p> <p>17 generally, on the issue of school board prayer from</p> <p>18 more than one counsel?</p> <p>19 A. Yes.</p> <p>20 Q. And were those counsel Mr. Griffin and</p> <p>21 Mr. Neuberger?</p> <p>22 A. Well, they were two of the legal counsel, and</p> <p>23 then the legal counsel that -- Well, no, I don't know</p> <p>24 if legal counsel from the insurance company</p>	<p style="text-align: right;">112</p> <p>1 please.</p> <p>2 BY MR. ALLINGHAM:</p> <p>3 Q. Do you understand that this lawsuit is being</p> <p>4 prosecuted by the ACLU?</p> <p>5 A. Yes, I do.</p> <p>6 Q. What is the basis for that understanding?</p> <p>7 A. Well, I understand that the ACLU represents</p> <p>8 the Dobrich family.</p> <p>9 Q. Where did you get that understanding?</p> <p>10 A. I assume one of the attorneys. I don't</p> <p>11 remember which one.</p> <p>12 Q. You --</p> <p>13 A. Somebody. I can't tell you who it was.</p> <p>14 Q. You talked in some earlier answers about</p> <p>15 understanding what the public perceives in your</p> <p>16 district. Do you believe that the public perceives</p> <p>17 that the ACLU is prosecuting this lawsuit?</p> <p>18 A. I believe so.</p> <p>19 Q. And do you believe that the public views the</p> <p>20 board's defense of this lawsuit as, in some sense,</p> <p>21 standing up to the ACLU?</p> <p>22 A. In some sense, yes.</p> <p>23 Q. And do you believe that the public views the</p> <p>24 defense of this lawsuit as a defense of Christian</p>

<p>113</p> <p>1 values?</p> <p>2 A. Yes.</p> <p>3 Q. Do you believe that the public views the</p> <p>4 defense of this lawsuit as a defense of Christian</p> <p>5 prayer?</p> <p>6 A. No.</p> <p>7 Q. Do you believe -- What are the Christian</p> <p>8 values that you believe the defense of this lawsuit is</p> <p>9 perceived to be defending?</p> <p>10 A. The right to pray at a board meeting.</p> <p>11 Q. Why is that a Christian value, but -- Sorry.</p> <p>12 Why is that a Christian value as opposed to simply --</p> <p>13 Strike that. I will withdraw the question.</p> <p>14 Now, in the August 23 board meeting you will</p> <p>15 see that no action was taken on Number 0501PL. The</p> <p>16 next board meeting was the next day, August 24.</p> <p>17 Do you have any recollection of why a special</p> <p>18 meeting for the purpose of discussing the school board</p> <p>19 prayer issue was scheduled for the day before the</p> <p>20 August 24 meeting?</p> <p>21 A. No, I don't.</p> <p>22 Q. It's your understanding of the board's</p> <p>23 intention that its meetings be conducted in a</p> <p>24 respectful and courteous manner; is that correct?</p>	<p>115</p> <p>1 respectful and courteous?</p> <p>2 A. I believe the conduct of the board was, but</p> <p>3 not necessarily the public in some instances with the</p> <p>4 booing. I don't approve of that.</p> <p>5 Q. Did you do anything to stop the booing?</p> <p>6 A. No, I did not.</p> <p>7 Q. Do you recall that the board president did</p> <p>8 anything to stop the booing?</p> <p>9 A. I don't recall that he did.</p> <p>10 Q. Looking back on it, do you think that he</p> <p>11 should have?</p> <p>12 A. Yes, and second thought, he may have slammed</p> <p>13 his gavel a couple times. I don't recall, but yes,</p> <p>14 yes, that should have been stopped.</p> <p>15 Q. Would you agree with me that the booing and</p> <p>16 the cheering intensified the emotionally charged</p> <p>17 atmosphere of that meeting?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Would you agree with me that the atmosphere</p> <p>20 of the meeting was intimidating to persons who spoke</p> <p>21 out against school board prayer?</p> <p>22 A. I can't speak for those individuals, but I</p> <p>23 would think that it would be.</p> <p>24 Q. You would agree, at least, that it would</p>
<p>114</p> <p>1 A. That's correct.</p> <p>2 Q. And the board member who is initially charged</p> <p>3 with that is the board president who has the gavel;</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. But would you agree with me that each</p> <p>7 individual board member has the obligation to try to</p> <p>8 ensure, to the best of his ability, that meetings are</p> <p>9 conducted in a courteous and respectful manner?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And if you felt that the board president was</p> <p>12 not acting to stop disrespectful or discourteous</p> <p>13 behavior, you would do something yourself to address</p> <p>14 the issue, wouldn't you?</p> <p>15 A. Yes, I believe I would.</p> <p>16 Q. And would that be to pass a note or speak to</p> <p>17 the board president in the first instance?</p> <p>18 A. That could be one of those methods.</p> <p>19 Q. And an alternative would be to stand up and</p> <p>20 take action yourself; correct?</p> <p>21 A. If needed.</p> <p>22 Q. During the August 24 board meeting, the big</p> <p>23 meeting, did you believe that the conduct of the board</p> <p>24 and the members of the public was at all times</p>	<p>116</p> <p>1 not be unreasonable for people who had spoken out</p> <p>2 against school board prayer to find the atmosphere of</p> <p>3 the public session intimidating?</p> <p>4 A. I would, yes, it could be.</p> <p>5 Q. Mr. Evans, do you recall a speaker who spoke</p> <p>6 about Madalyn Murray O'Hair during the public comment</p> <p>7 session of the meeting?</p> <p>8 A. I believe I do.</p> <p>9 Q. And that was Mr. Harold Johnson?</p> <p>10 A. I don't remember who.</p> <p>11 Q. Did you serve on the school board with</p> <p>12 Mr. Harold Johnson?</p> <p>13 A. No, I did not.</p> <p>14 Q. So his term predated 1996?</p> <p>15 A. Yes, that's correct.</p> <p>16 Q. You do know that Mr. Johnson was a former</p> <p>17 school board member?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And do you recall that Mr. Johnson spoke at</p> <p>20 the big meeting?</p> <p>21 A. Yes.</p> <p>22 Q. Does my saying his name remind you that it</p> <p>23 was Mr. Johnson who spoke about Madalyn Murray O'Hair?</p> <p>24 A. No, it does not.</p>

<p style="text-align: right;">125</p> <p>1 Q. Is it correct that for -- Strike that. Is it</p> <p>2 correct that your belief that your prayer was</p> <p>3 appropriate is unaffected by the religious faith of</p> <p>4 the students who were in the audience, it doesn't</p> <p>5 matter what their faith was; correct?</p> <p>6 A. Repeat that, please.</p> <p>7 Q. Yes. Your view, I assume, was that the</p> <p>8 prayer you offered at each of those five sessions was</p> <p>9 constitutional and appropriate?</p> <p>10 A. Yes.</p> <p>11 Q. And, by that, I mean both constitutional and</p> <p>12 appropriate.</p> <p>13 A. Yes.</p> <p>14 Q. Okay, and your view about that, that is that</p> <p>15 the prayer was constitutional and appropriate, is</p> <p>16 unaffected by what the religious faith of the students</p> <p>17 who were present might be; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And is that, sir, because your prayer was</p> <p>20 directed only to the ten board members?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, in forming that view, do you also rely</p> <p>23 on the fact that the board, through its president,</p> <p>24 reads a disclaimer before the prayer is offered?</p>	<p style="text-align: right;">127</p> <p>1 Q. You testified earlier that it would take</p> <p>2 courage, it was a tough chore for a kid to get up and</p> <p>3 walk out during the prayer. The reason for that is</p> <p>4 that kids don't want to be singled out as a person who</p> <p>5 doesn't participate in prayers; correct?</p> <p>6 A. If you leave the last part of that statement</p> <p>7 out, I might be able to agree with you.</p> <p>8 Q. Okay, I will. One reason for kids requiring</p> <p>9 courage and being a tough chore is kids don't like to</p> <p>10 be singled out?</p> <p>11 A. I agree with that.</p> <p>12 Q. Period?</p> <p>13 A. Yes.</p> <p>14 Q. And that would include not wanting to be</p> <p>15 singled out as a person who doesn't want to</p> <p>16 participate in a prayer?</p> <p>17 A. It may.</p> <p>18 Q. Aside from the complaints of the Dobrich</p> <p>19 family and the Doe family, are you aware of any other</p> <p>20 complaints about the use of prayer during Indian River</p> <p>21 School Board meetings?</p> <p>22 A. No, I am not.</p> <p>23 Q. During the course of the board's</p> <p>24 consideration of the school board prayer policy during</p>
<p style="text-align: right;">126</p> <p>1 A. I am aware of that, yes.</p> <p>2 Q. And do you think that provides anyone who</p> <p>3 does not wish to hear or participate in the prayer</p> <p>4 with an opportunity to get up and leave?</p> <p>5 A. Yes, I do.</p> <p>6 Q. With respect to students who are in</p> <p>7 attendance, would you agree with me that it requires</p> <p>8 considerable courage for a school child to get up and</p> <p>9 walk out of the meeting when a prayer is being</p> <p>10 offered?</p> <p>11 A. Yes, it would.</p> <p>12 Q. That's a tough chore to give to a student;</p> <p>13 wouldn't you agree?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Because students, just like you, know that</p> <p>16 the overwhelming majority of the residents of the</p> <p>17 Indian River School District are Christian; correct?</p> <p>18 A. I don't know that they do. They may.</p> <p>19 Q. And it's your belief, isn't it, sir, that the</p> <p>20 students, by and large, will not wish to be singled</p> <p>21 out as not wanting to participate in a prayer; isn't</p> <p>22 that right? Do you want me to ask the question in a</p> <p>23 different way?</p> <p>24 A. Yes, yes, a different way, please.</p>	<p style="text-align: right;">128</p> <p>1 the public comment sessions, did you hear comments</p> <p>2 from persons other than the Dobrich family which urged</p> <p>3 the board to consider nondenominational prayer?</p> <p>4 A. Yes.</p> <p>5 Q. Several people?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Evans, would you agree with me that the</p> <p>8 use of prayer before school board meetings has</p> <p>9 attracted a lot of attention from the public and the</p> <p>10 media in the Indian River School District?</p> <p>11 A. Yes.</p> <p>12 Q. Do you think that the degree of attention</p> <p>13 that this issue has gotten -- Strike that. Let me ask</p> <p>14 it a different way. Do you think that the issue of</p> <p>15 prayer during the school board meeting should have</p> <p>16 attracted as much attention by the public and the</p> <p>17 media as it has?</p> <p>18 A. You are asking if it should, if I think it</p> <p>19 should have?</p> <p>20 Q. Yes, sir. Among all the issues that come</p> <p>21 before the school board --</p> <p>22 A. No, I don't think it should have.</p> <p>23 Q. And why is that?</p> <p>24 A. There is more important issues for a school</p>

<p style="text-align: right;">153</p> <p>1 knowing Jesus. We also pray that you would be with</p> <p>2 them at this time. We ask these things in Jesus's</p> <p>3 name. Amen." Is that prayer permitted by or</p> <p>4 prohibited by paragraph three?</p> <p>5 A. Possibly the sentence, "We pray that you</p> <p>6 direct them into the truth and eventually the truth</p> <p>7 that comes by knowing Jesus," that might be, that</p> <p>8 might violate paragraph three.</p> <p>9 Q. You would view that as proselytizing?</p> <p>10 A. Yes, I would.</p> <p>11 Q. The next prayer may -- Your judgment about</p> <p>12 the next prayer may seem obvious to you, but I am</p> <p>13 going to ask it anyway. Suppose that a board member</p> <p>14 offered the prayer, "Oh, Lord, convert the heathen</p> <p>15 among us." That would violate it?</p> <p>16 A. That would definitely violate paragraph</p> <p>17 three.</p> <p>18 Q. Yes, sir, or a prayer that said, "Oh, Lord,</p> <p>19 bring the Jews in the audience to knowledge and love</p> <p>20 of our savior, Jesus Christ."</p> <p>21 A. It would violate paragraph three.</p> <p>22 Q. And I have one last prayer for you. It's</p> <p>23 short, but if you need me to read it again, I will.</p> <p>24 "Allah, we offer you our school bus drivers. We offer</p>	<p style="text-align: right;">155</p> <p>1 three.</p> <p>2 Q. Okay. Now, Mr. Evans, we talked earlier in</p> <p>3 the deposition about the enforcement mechanism for</p> <p>4 this paragraph, and I, I think we established that</p> <p>5 it's the board members who are ultimately responsible</p> <p>6 for enforcing all of the board prayer policy,</p> <p>7 including paragraph three; correct?</p> <p>8 A. Right.</p> <p>9 Q. If a board member offered, I am going to take</p> <p>10 the extreme example first or the most extreme example</p> <p>11 first, if a board member who was invited by the</p> <p>12 president to open a meeting with a prayer said, "Lord,</p> <p>13 we pray that you convert the Jews in the audience to</p> <p>14 knowledge and love of your son, our Lord, Jesus</p> <p>15 Christ," which you and I have agreed, I think, is</p> <p>16 violative of paragraph three, --</p> <p>17 A. Yes.</p> <p>18 Q. -- what would you do as a board member?</p> <p>19 A. What would I do?</p> <p>20 Q. If you heard that prayer, what would you do?</p> <p>21 A. Well, at that point it would be a little too</p> <p>22 late to stop it, but I would -- I would have to talk</p> <p>23 to the president that that person should be</p> <p>24 reprimanded. Maybe that's a harsh word, but that</p>
<p style="text-align: right;">154</p> <p>1 you our superintendent, our administrators, and our</p> <p>2 secretaries. We offer you our teachers and our</p> <p>3 parents. Finally, we offer you our students. Peace</p> <p>4 be unto your prophet, Muhammed." Would you view that</p> <p>5 as permitted or prohibited by paragraph three?</p> <p>6 A. Well, I don't know what the prayer means by</p> <p>7 offer.</p> <p>8 Q. So, without knowing, you can't make a</p> <p>9 judgment?</p> <p>10 A. That's correct. I don't know. Whomever</p> <p>11 would read that prayer, offer might mean something</p> <p>12 different to them than it does to me.</p> <p>13 Q. Well, let's explore that a little bit. Do</p> <p>14 you have a sense of what you would mean if you offered</p> <p>15 a prayer like that where you used the word, "we offer</p> <p>16 you our teachers and students," or would you just not</p> <p>17 offer a prayer like that?</p> <p>18 A. I wouldn't use the word offer. I might say,</p> <p>19 you know, protect or help or something along that</p> <p>20 line.</p> <p>21 I mean it appears that that would not violate</p> <p>22 paragraph three, but again it depends on what the word</p> <p>23 offer means by that individual. I would not be able</p> <p>24 to determine from that prayer if it violates paragraph</p>	<p style="text-align: right;">156</p> <p>1 person should be informed that they are not to pray</p> <p>2 like that. That violates paragraph three of our</p> <p>3 policy.</p> <p>4 Q. And all board members should comply with the</p> <p>5 policy; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. But, as you pointed out, at that point</p> <p>8 the horse would be out of the barn, so to speak?</p> <p>9 A. That's right.</p> <p>10 Q. There is no provision in the policy for a</p> <p>11 reprimand or a punishment to a board member. Do you</p> <p>12 believe that a board member who offered such a prayer</p> <p>13 would be reprimanded or punished?</p> <p>14 A. Do I believe they would? If I were the</p> <p>15 president, yeah, I would.</p> <p>16 Q. And when you say reprimand, do you mean --</p> <p>17 A. Well, when I say reprimand, I just mean talk</p> <p>18 to that person and tell them, "Look, you violated our</p> <p>19 policy, you cannot pray like you just prayed, and, if</p> <p>20 it happens again, you won't be asked to pray." That's</p> <p>21 the way I would handle it.</p> <p>22 Q. Okay, and so, as you understand, it's not a</p> <p>23 mechanism that's set forth in the policy, but as you</p> <p>24 understand the way the policy ought to work, if a</p>

EXHIBIT 7

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually and as parents and next friend of ALEXANDER DOBRICH, 5 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, individually and as parents and next friend of 6 JORDAN DOE and JAMIE DOE, 7 Plaintiffs 8 Civil Action 9 vs. NO. 15-120 10 INDIAN RIVER SCHOOL DISTRICT, ET AL., Defendants 11 12 Deposition of GREGORY HASTINGS, taken pursuant to notice at the Indian River School 13 District, 31 Hosier Street, Selbyville, Delaware, beginning at 9:07 a.m. on October 13, 2006 before 14 David A. Sroka, Registered Professional Reporter and Notary Public. 15 APPEARANCES: 16 17 THOMAS ALLINGHAM, ESQ. RICHARD HORVATH BRIAN LENHARD 18 P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs 19 JARROD D. SHAW, ESQ. 20 Drinker Biddle & Reath, LLP One Logan Square 21 Philadelphia, Pennsylvania 19103-6996 22 For the Defendants 23 24</p>	<p>3 1 GREGORY HASTINGS, 2 The Witness herein, called for examination by 3 the Plaintiffs, having been duly sworn to tell the 4 truth, the whole truth, and nothing but the truth, 5 was examined and testified as follows: 6 EXAMINATION BY MR. ALLINGHAM: 7 Q. Good morning, Mr. Hastings. I am going to 8 ask you to clear up something that has been bugging 9 me. Is it H-O-S-I-E-R or H-O-O-S-I-E-R? Is it 10 pronounced Hoosier or Hosier? 11 A. In this area we pronounce it Hosier. 12 Q. Do you know how it's spelled? 13 A. I believe it's one O. 14 Q. Thanks. Have you ever been deposed before? 15 A. Yes, I have, yes. 16 Q. In what context? 17 A. As a defendant. 18 Q. What kind of a case? 19 A. It was a teacher in our high school and 20 there was -- she brought on a suit, I have to 21 reflect, this has been 12 years, I guess. 22 Q. All right, I don't need that much detail. 23 That was a suit by a teacher? 24 A. Yes.</p>
<p>2 1 MS. DUPHILY: This is the 2 videotape deposition of Mr. Greg Hastings, 3 taken by the Plaintiff, in the 4 matter of Dobrich, et al. versus Indian 5 River School District, at al., case 6 number 15-120. 7 The deposition is taking place at 31 8 Hosier Boulevard, Selbyville, Delaware. We 9 are going on the record on October 13, 10 2006 at approximately 9:07 a.m.. The court 11 reporter is Dave Sroka from the firm of 12 Wilcox & Fetzer. My name is Lindsay 13 duPhily and I am with Discovery Video 14 Services in association with Wilcox & 15 Fetzer. 16 I will now ask counsel to 17 identify themselves on the record, and then 18 the court reporter will swear in the 19 witness. 20 MR. ALLINGHAM: I am Tom Allingham 21 representing the Plaintiffs. With me are 22 Rick Horvath and Brian Lenhard. 23 MR. SHAW: Jarrod Shaw 24 representing the defendants.</p>	<p>4 1 Q. And it was against you in your capacity as 2 a School Board member? 3 A. Capacity as a School Board member? 4 Q. Yes, sir? 5 A. Yes. 6 Q. Have you ever testified at trial? 7 A. I have been an expert witness in Small 8 Claims Court, that's the extent of it. 9 Q. Did the court issue an opinion in that 10 case? 11 A. Yes. 12 Q. Were you mentioned in the opinion? 13 A. I don't believe so. 14 Q. What was your area of expertise in that 15 testimony? 16 A. I had provided architectural design for the 17 product. This has been a long time, too but -- 18 Q. Let me cut you off. It has nothing to do 19 with issues of religion in the schools, right? 20 A. No. thank you, no. 21 Q. What is your -- I am trying to keep this 22 limited to the issues here. You are employed as an 23 architect? 24 A. Yes, I own a small architectural design</p>

<p>41</p> <p>1 a legislative body, has anyone expressed any</p> <p>2 concerns or reservations or drawn any distinctions</p> <p>3 between the General Assembly and its functions, for</p> <p>4 example, and the School Board and its functions?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Legislative bodies pass laws, is that</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And those laws are then enforced by a</p> <p>10 different branch of government, correct?</p> <p>11 A. Correct.</p> <p>12 Q. The School Board doesn't pass laws, but it</p> <p>13 passes policies, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Unlike the General Assembly the School</p> <p>16 Board also enforces those policies, correct?</p> <p>17 A. Yes.</p> <p>18 Q. At any time during the discussion of</p> <p>19 whether the Board was a legislative body did anyone</p> <p>20 raise or discuss the fact that students are</p> <p>21 consistently present at regular Board meetings?</p> <p>22 A. I don't recall.</p> <p>23 Q. It is a fact that at least since the mid</p> <p>24 1990s students were consistently present at regular</p>	<p>43</p> <p>1 Mr. Hastings, this is a long document, you</p> <p>2 take as long as you want to read it, but my first</p> <p>3 question to you is have you ever seen it before, and</p> <p>4 you may be able to answer that question without</p> <p>5 reading the whole document?</p> <p>6 A. I may have, but I can't recall. It's been</p> <p>7 two years.</p> <p>8 Q. If you look at the fourth page of the</p> <p>9 exhibit?</p> <p>10 A. Uh-hum.</p> <p>11 Q. You will see there are five numbered</p> <p>12 paragraphs at the bottom of the page, the fifth one</p> <p>13 of which carries over to the next page. With some</p> <p>14 extremely minor language changes can you confirm</p> <p>15 that the five numbered paragraphs on PX12 are</p> <p>16 essentially identical to the numbered paragraphs of</p> <p>17 the final Board policy? The only change I can tell</p> <p>18 you is I know that there is in paragraph four just</p> <p>19 is changed to only, but apart from that do you see</p> <p>20 any other changes?</p> <p>21 A. No.</p> <p>22 Q. Do you know who drafted PX12?</p> <p>23 A. I suspect the Neuberger firm.</p> <p>24 Q. It says up at the top left the Rutherford</p>
<p>42</p> <p>1 Board meetings?</p> <p>2 A. Yes.</p> <p>3 Q. And so when you walk into the Board meeting</p> <p>4 or walk out to take your seat on the stage or where</p> <p>5 ever the meeting is being held, you expect that</p> <p>6 students will be in the audience?</p> <p>7 A. Most generally, yes.</p> <p>8 Q. Sometimes it's only half a dozen students,</p> <p>9 maybe it's just the ROTC color guard?</p> <p>10 A. Yes.</p> <p>11 Q. Sometimes, I've seen some minutes where it</p> <p>12 looked like there were 50 or more students there, is</p> <p>13 that right?</p> <p>14 A. Yes.</p> <p>15 Q. Can you think of any regular Board meeting</p> <p>16 where there have been no students present?</p> <p>17 A. Probably in the summer months.</p> <p>18 Q. Oh, I should have been clear about my</p> <p>19 question. Can you think of any regular Board</p> <p>20 meeting during the academic year when students were</p> <p>21 not present?</p> <p>22 A. No.</p> <p>23 Q. All right, I am going to show you another</p> <p>24 exhibit, this is PX12.</p>	<p>44</p> <p>1 Institute and the Neuberger firm, is that the basis</p> <p>2 for your answer?</p> <p>3 A. Yes.</p> <p>4 Q. Did anyone ever tell you that the board</p> <p>5 policy as it was presented to you for a first</p> <p>6 reading on September 28th had been drafted by the</p> <p>7 Neuberger firm?</p> <p>8 A. I can't recall.</p> <p>9 Q. In an earlier answer you told me that your</p> <p>10 normal process is to have Board policies checked by</p> <p>11 the Board attorney, correct?</p> <p>12 A. Yes.</p> <p>13 Q. In the summer and fall of 2004 who was the</p> <p>14 Board's attorney?</p> <p>15 A. If memory serves me correctly it was Jim</p> <p>16 Griffin.</p> <p>17 Q. Do you know whether anyone on the Board or</p> <p>18 the policy committee asked Mr. Griffin to</p> <p>19 participate in the drafting of the Board policy on</p> <p>20 School Board prayer?</p> <p>21 A. I don't want to assume, I know what happens</p> <p>22 when you assume, but knowing our procedure and the</p> <p>23 policy committee I would -- sitting here today I</p> <p>24 would to -- that was the normal procedure, that it's</p>

<p style="text-align: right;">77</p> <p>1 understood that it was in a gym, gymnasium, I</p> <p>2 believe.</p> <p>3 Q. And that gymnasium was set up not only with</p> <p>4 speakers but also with a video feed from the actual</p> <p>5 Board meeting room?</p> <p>6 A. I believe so, I was told that, yes.</p> <p>7 Q. Mrs. Bunting told me yesterday that she had</p> <p>8 heard via hearsay a couple of days before the</p> <p>9 meeting that there were going to be very large</p> <p>10 crowds at the meeting, did you hear that as well?</p> <p>11 A. I would have to say I suspect if there were</p> <p>12 alleged large crowds going to be in attendance I</p> <p>13 would not have heard it until that meeting, that</p> <p>14 special meeting the evening before, but I don't</p> <p>15 recall anything specific.</p> <p>16 Q. Am I right that you weren't shocked that</p> <p>17 there were very large crowds when you arrived for</p> <p>18 that Board meeting?</p> <p>19 A. No, not really, that's correct, I was not</p> <p>20 shocked. That's usually what happens.</p> <p>21 Q. What's usually what happens?</p> <p>22 A. When there is an issue that's very</p> <p>23 personal, or parents in our community have a</p> <p>24 concern, very strong concern about an issue, there</p>	<p style="text-align: right;">79</p> <p>1 who discussed with church groups their attendance at</p> <p>2 the August 24 School Board meeting?</p> <p>3 A. I do not.</p> <p>4 Q. Are you aware of any effort by any School</p> <p>5 Board member to encourage people to attend the</p> <p>6 August 24 School Board meeting?</p> <p>7 A. No, I do not.</p> <p>8 Q. Did you happen to hear Dr. Hattier's</p> <p>9 comments on WGND shortly before the School Board</p> <p>10 meeting?</p> <p>11 A. The August 24th meeting?</p> <p>12 Q. Yes, sir?</p> <p>13 A. I don't recall. He's always on the radio.</p> <p>14 Q. I'm sorry say again?</p> <p>15 A. He's always on the radio.</p> <p>16 Q. Did you ever come to hear what Dr. Hattier</p> <p>17 said on the radio shortly before the August 24th</p> <p>18 meeting?</p> <p>19 A. No.</p> <p>20 Q. Did anything occur at the meeting itself,</p> <p>21 the August 24th meeting that you found disturbing?</p> <p>22 A. I guess I would have to comment as we have</p> <p>23 established that's probably the largest numbers of</p> <p>24 parental constituent turn out that we've ever had at</p>
<p style="text-align: right;">78</p> <p>1 would be a moderate to a large attendance to the</p> <p>2 Board meeting. So, that's why I was not surprised</p> <p>3 to see a large turn out.</p> <p>4 Q. Can you recall any Board meeting during</p> <p>5 your 12 year tenure that had a turnout that even</p> <p>6 approved the turnout at this meeting?</p> <p>7 A. One, on one other occasion. And that was a</p> <p>8 negotiation issue between the district and teachers</p> <p>9 union several years ago.</p> <p>10 Q. Do you know how many people attended that</p> <p>11 meeting?</p> <p>12 A. I am going to guess maybe 300.</p> <p>13 Q. The published reports of the attendance at</p> <p>14 the August 24th meeting were 6 to 800. That's based</p> <p>15 on your answer a minute ago, would I be right in</p> <p>16 understanding that at least for your 12 and a half</p> <p>17 year tenure the attendance at the August 24th</p> <p>18 meeting was double, roughly speaking, double the</p> <p>19 highest attendance at any other Board meeting during</p> <p>20 your tenure?</p> <p>21 A. Yes.</p> <p>22 Q. I asked you this question specifically with</p> <p>23 respect to you and your family, let me ask it</p> <p>24 generally, do you know of any School Board member</p>	<p style="text-align: right;">80</p> <p>1 a Board meeting.</p> <p>2 When you have large numbers such as that,</p> <p>3 it does have tendency to have effect on the regular</p> <p>4 Board meeting. The regular Board meeting is to</p> <p>5 conduct business, share concerns, discuss issues,</p> <p>6 just conduct business of the slated agenda. I am</p> <p>7 going to have to say that just in general the</p> <p>8 overall ambience of the crowd, and the meeting, was</p> <p>9 a little disturbing, but nothing -- I can't recall</p> <p>10 anything specific that was I'll say alarming, if</p> <p>11 that's what you are asking or referring to.</p> <p>12 Q. What was it in your view about the overall</p> <p>13 ambience of the crowd in the meeting that was a</p> <p>14 little disturbing?</p> <p>15 A. Many of them had signs they were waving, on</p> <p>16 occasion there might -- I believe there was an</p> <p>17 outburst or some larger or someone would comment.</p> <p>18 When you have a group of people together like that</p> <p>19 it can get a little unruly. I understand there was</p> <p>20 some singing prior to the meeting in the gymnasium.</p> <p>21 I don't recall hearing singing in the cafeteria</p> <p>22 where we conducted our meeting, but it was -- it</p> <p>23 proposed for an interesting meeting, let's put it</p> <p>24 that way.</p>

<p>109</p> <p>1 A. Yes, that is tradition.</p> <p>2 Q. Why was that changed in the adoption of the</p> <p>3 policy?</p> <p>4 A. To rotating?</p> <p>5 Q. Yes.</p> <p>6 A. I don't know specific, but I suspect that</p> <p>7 was offered in the policy to ensure at that setting</p> <p>8 regardless of the faith of any Board member that</p> <p>9 they would have the opportunity to share their</p> <p>10 prayer at the opening of a regular Board meeting.</p> <p>11 Q. And to give you an example, if the district</p> <p>12 elected a Jewish Board member you wanted to make</p> <p>13 sure that the president didn't just skip over the</p> <p>14 Jewish Board member every time?</p> <p>15 A. Correct.</p> <p>16 Q. Or an atheist Board member, or whatever,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Because if an atheist Board member were</p> <p>20 elected, that Board member might want to say look I</p> <p>21 don't believe in a higher power, but I do believe in</p> <p>22 solemnifying our proceedings, and I urge all of you</p> <p>23 to join me in reminding myself to take seriously my,</p> <p>24 you know, my oath as a Board member, whatever, yes?</p>	<p>111</p> <p>1 Q. I am going to ask you the same question</p> <p>2 with respect to the Indian River School Board. In</p> <p>3 order for the School Board to solemnify its</p> <p>4 proceedings, is it necessary for it to open its</p> <p>5 meetings with a prayer? Would you give me the same</p> <p>6 answer, nice but not necessary?</p> <p>7 A. Nice but not necessary.</p> <p>8 Q. And let me follow-up on that. In your view</p> <p>9 why would it be nice?</p> <p>10 A. Again for the comment I made just a moment</p> <p>11 ago, with the charge that we have, the</p> <p>12 responsibilities that we have, we need all the help</p> <p>13 we can get. So, if that's divine help to guide us</p> <p>14 and make all the right decisions, because some of</p> <p>15 the decisions are tough. It's nice to seek that</p> <p>16 extra help.</p> <p>17 Q. Fair enough. And in that context, and in</p> <p>18 the context of the reason why in your view it's nice</p> <p>19 to do it, you could accomplish that result, that it</p> <p>20 would be equally nice, if you will, to have the</p> <p>21 prayer or moment of silence off stage?</p> <p>22 A. I suppose, yes.</p> <p>23 Q. Because the prayer is not directed to the</p> <p>24 public who are sitting out in the audience in front</p>
<p>110</p> <p>1 A. Yes.</p> <p>2 Q. Who is the intended audience of the prayer,</p> <p>3 the ten Board members who are the ones who have to</p> <p>4 make the decisions at that Board meeting?</p> <p>5 A. In my opinion, yes.</p> <p>6 Q. And so I take it that the intended audience</p> <p>7 of the prayer is the ten Board members, it would be</p> <p>8 just as effective for the ten Board members to stand</p> <p>9 in the wings and have their prayer and then walk</p> <p>10 onto the stage as it would be for them to walk onto</p> <p>11 the stage and then have their prayer, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Did anybody ever suggest that a policy or</p> <p>14 practice that would have contemplated that the</p> <p>15 prayer that would solemnify the proceedings take</p> <p>16 place before the Board walked out on stage?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. I asked you a question about the State</p> <p>19 Board of Education, and whether it was necessary for</p> <p>20 the State Board of Education to have a prayer, to</p> <p>21 open its meetings with a prayer in order to</p> <p>22 solemnify its proceedings and you answer was, "Nice</p> <p>23 but not necessary," do you remember that?</p> <p>24 A. Yes.</p>	<p>112</p> <p>1 of the stage, correct?</p> <p>2 A. In my opinion, that's correct.</p> <p>3 Q. Look at PX9 which is the board prayer</p> <p>4 again. From October 19, 2004, which is when this</p> <p>5 policy was adopted, until the last meeting that you</p> <p>6 attended, which -- I'm sorry if I am getting this</p> <p>7 wrong, which was in December of 2005, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Was this rotating basis among each</p> <p>10 individual Board member observed? That is to say,</p> <p>11 in practice was the opportunity rotated among each</p> <p>12 individual Board member?</p> <p>13 A. The only comment I could make to that would</p> <p>14 be I may have been asked on one other occasion</p> <p>15 during that period of time to ask, to give a prayer,</p> <p>16 but I can't speak to whether or not the president</p> <p>17 had gone in rotation fashion or asked several of the</p> <p>18 Board members in rotation to speak.</p> <p>19 Again, in practice what the Board president</p> <p>20 usually has done is prior to the meeting, once we</p> <p>21 arrive is walk up to that individual and ask them,</p> <p>22 see if they are willing to give the prayer before we</p> <p>23 begin that evening session.</p> <p>24 Q. The third paragraph reads, "Such</p>

<p style="text-align: right;">113</p> <p>1 opportunity shall not used or exploited to</p> <p>2 proselytize, advance or convert anyone, or to</p> <p>3 derogate or otherwise disparage any particular faith</p> <p>4 or belief." Would you please describe for me during</p> <p>5 your tenure on the Board how you analyzed whether</p> <p>6 prayers that were offered violated or complied with</p> <p>7 this limitation?</p> <p>8 A. Again ask that, please.</p> <p>9 Q. I will ask a preliminary question. Once</p> <p>10 you all adopted this policy on October 19, 2004, did</p> <p>11 you evaluate the prayers that were given thereafter</p> <p>12 to make sure that they complied with paragraph</p> <p>13 three?</p> <p>14 A. To my knowledge, no, we didn't do it at a</p> <p>15 Board setting. No, I don't recall specifically</p> <p>16 analyzing that or discussing that to see if we were</p> <p>17 abiding by item three in this Board or this Prayer</p> <p>18 Policy, no.</p> <p>19 Q. What enforcement mechanism is there to make</p> <p>20 sure that Board members do not use or exploit the</p> <p>21 prayer opportunity to proselytize, advance or</p> <p>22 convert anyone or to derogate or otherwise disparage</p> <p>23 any particular faith or belief?</p> <p>24 A. In past practice, to assure us following</p>	<p style="text-align: right;">115</p> <p>1 first one -- I have two of them written down, so you</p> <p>2 can follow along with me when I read them, and the</p> <p>3 one is short.</p> <p>4 The first one is Exhibit 35, and it reads</p> <p>5 as follows: "Do not put your trust in princes in</p> <p>6 mortal men who cannot even save themselves. When</p> <p>7 their spirit departs they return to the ground. On</p> <p>8 that very day their plans come to nothing. Blessed</p> <p>9 is he whose help is the God of Jacob, whose hope is</p> <p>10 in the Lord his God the maker of heaven and earth,</p> <p>11 the sea and everything in them. The Lord who</p> <p>12 remains faithful forever.</p> <p>13 He upholds the cause of the oppressed and</p> <p>14 gives food to the hungry. The Lord sets prisoners</p> <p>15 free, the Lord gives sight to the blind, the Lord</p> <p>16 lifts up those who are bowed down, the Lord loves</p> <p>17 the righteous. The Lord watches over the alien and</p> <p>18 sustains the fatherless and the widow, but he</p> <p>19 frustrates the ways of the wicked. For the wages of</p> <p>20 sin is death, but the gift of God is eternal life.</p> <p>21 Through Jesus Christ our Lord."</p> <p>22 Would that prayer be permissible under</p> <p>23 paragraph three or violative of paragraph three?</p> <p>24 A. Being read from a Board member in that</p>
<p style="text-align: right;">114</p> <p>1 Board policy, it would be typically Board members</p> <p>2 raising a question, if a question would arise. So,</p> <p>3 individual Board members being responsible, if you</p> <p>4 will. The superintendent bringing an issue to the</p> <p>5 table if we were getting off kilter, or lastly if</p> <p>6 the attorney would happen to be present that evening</p> <p>7 or if something, a question would arise and we need</p> <p>8 to refer it back to the attorney for review.</p> <p>9 Q. Paragraph three is here for a reason,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And if an opportunity was used to</p> <p>13 proselytize, advance or convert anyone or to</p> <p>14 derogate or otherwise disparage any particular faith</p> <p>15 or belief, you would view that as unconstitutional,</p> <p>16 wouldn't you?</p> <p>17 A. Yes.</p> <p>18 Q. So, compliance with paragraph three is</p> <p>19 important?</p> <p>20 A. Yes.</p> <p>21 Q. I am going to ask you about three prayers</p> <p>22 and I'd like to tell me whether in your view as a</p> <p>23 Board member they would have been in compliance with</p> <p>24 paragraph three or violative of paragraph three. The</p>	<p style="text-align: right;">116</p> <p>1 setting?</p> <p>2 Q. Yes.</p> <p>3 A. In our setting. I'd say permissible.</p> <p>4 Q. The second prayer is PX45, maybe you can</p> <p>5 get the original. This prayer reads as follows:</p> <p>6 "Heavenly Father, thank you for this great occasion,</p> <p>7 for the work, the effort, the joys and everything</p> <p>8 that led up to this point in time. Thank you for</p> <p>9 your guidance in this event. We pray for your</p> <p>10 direction in the lives of each of these School Board</p> <p>11 members. We pray that you direct them into the</p> <p>12 truth, and eventually the truth that comes by</p> <p>13 knowing Jesus. We also pray that you would be with</p> <p>14 them at this time. We ask these things in Jesus'</p> <p>15 name. Amen."</p> <p>16 Would you view that as violative of</p> <p>17 paragraph three or permissible?</p> <p>18 A. Permissible.</p> <p>19 Q. And the last prayer reads as follows, and</p> <p>20 if you need me to read it twice so you are sure, let</p> <p>21 me know: "Allah, we offer you our school bus</p> <p>22 drivers, we offer you our superintendent, our</p> <p>23 administrators and our secretaries. We offer you</p> <p>24 our teachers and our parents. Finally we offer you</p>

<p style="text-align: right;">117</p> <p>1 our students. Peace be unto your prophet Muhammad."</p> <p>2 Permissible or violative?</p> <p>3 A. Permissible.</p> <p>4 Q. Now, in reaching the judgment that you</p> <p>5 reached on each of those prayers, can you describe</p> <p>6 for me the way you analyze the problem? How did you</p> <p>7 reach the judgment that you reached that all three</p> <p>8 prayers were permissible?</p> <p>9 A. I commented a moment ago that in my opinion</p> <p>10 sitting there at the Board we need or we'd like to</p> <p>11 have all of the help we can get. If there happened</p> <p>12 to be other Board members at that particular time, a</p> <p>13 particular time, that were of different faith and</p> <p>14 they in this rotating basis were asked or offered a</p> <p>15 prayer, then their prayer of whatever choice would</p> <p>16 be respected.</p> <p>17 Q. Can you give me an example or generically a</p> <p>18 kind of prayer that you would view as violative of</p> <p>19 paragraph three?</p> <p>20 A. The only thing that I could share with you,</p> <p>21 that myself included would probably have difficulty</p> <p>22 with is and we are speaking of prayer, you are</p> <p>23 asking about our prayer, but if a prayer or offer</p> <p>24 for divine guidance to the devil or evil would be</p>	<p style="text-align: right;">119</p> <p>1 audience. Would you view that prayer as violative</p> <p>2 of paragraph three?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. On the issue of how paragraph three</p> <p>5 is enforced, I think you mentioned three groups or</p> <p>6 people who could bring to the attention of the Board</p> <p>7 the possibility that paragraph three had been</p> <p>8 violated. The first was the Board members</p> <p>9 themselves, a sort of self policing mechanism. The</p> <p>10 second was the superintendent who might bring an</p> <p>11 issue to the Board and the third was the Board</p> <p>12 attorney, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Just as a practical matter the Board</p> <p>15 attorney does not attend every meeting, is that</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. In fact, the Board attorney doesn't come</p> <p>19 unless specifically invited?</p> <p>20 A. That's correct.</p> <p>21 Q. To your knowledge has the Indian River</p> <p>22 School District ever had a Board member who was not</p> <p>23 a Christian?</p> <p>24 A. I have no idea. I can't respond to that.</p>
<p style="text-align: right;">118</p> <p>1 just a little difficult, I suspect.</p> <p>2 Q. Okay. I am going to give you another</p> <p>3 example of a prayer and ask you whether you think it</p> <p>4 would be violative. Suppose that a Board member</p> <p>5 said, we pray Lord that you enlighten the heathen in</p> <p>6 our midst and that you inspire them to come to</p> <p>7 knowledge of your wisdom and goodness. Would that</p> <p>8 prayer be violative of paragraph three?</p> <p>9 A. You need to repeat that one more time.</p> <p>10 Q. We pray Lord that you inspire the heathen</p> <p>11 in our midst to come to know your goodness and</p> <p>12 wisdom. That's not identical to what I said, but</p> <p>13 the idea is we pray that the heathen come to know</p> <p>14 your wisdom and goodness.</p> <p>15 Would that prayer be violative of paragraph</p> <p>16 three?</p> <p>17 A. I suspect it would be permissible.</p> <p>18 Q. So, you would not view such a prayer as a</p> <p>19 prayer that was used to convert anyone?</p> <p>20 A. No.</p> <p>21 Q. This one is going to be extreme, but it's</p> <p>22 to illustrate a point. Suppose that a Board member</p> <p>23 offered a prayer, Lord, we hope that you will</p> <p>24 convert to Christianity all the Jews in the</p>	<p style="text-align: right;">120</p> <p>1 Q. Well, let me turn the question around a</p> <p>2 little bit. Are you personally aware of any Board</p> <p>3 member who was not a Christian?</p> <p>4 A. No, no, I am not.</p> <p>5 MS. DUPHILY: We are going off the</p> <p>6 record at approximately 1:03 p.m..</p> <p>7 (WHEREUPON a brief recess was</p> <p>8 taken)</p> <p>9 MS. DUPHILY: Back on the record</p> <p>10 at 1:05 p.m..</p> <p>11 Q. Are you personally aware of any</p> <p>12 superintendent of the district who was not</p> <p>13 Christian?</p> <p>14 A. No.</p> <p>15 Q. And to the extent that it matters, are you</p> <p>16 aware of any school attorney who was not a</p> <p>17 Christian?</p> <p>18 A. No.</p> <p>19 Q. Do you think there is any danger that</p> <p>20 these, all of these I'll call them enforcement</p> <p>21 mechanisms, the people who represent the enforcement</p> <p>22 mechanisms as Christians would be less sensitive to</p> <p>23 whether an opportunity is used to proselytize,</p> <p>24 advance or convert anyone, than might a person of</p>

<p>129</p> <p>1 Q. A couple of questions again about the</p> <p>2 August 24th Board meeting but you won't have to make</p> <p>3 judgments, at least not as many judgments as I asked</p> <p>4 you about before. Do you recall that state</p> <p>5 representatives Hocker and Atkins spoke at the</p> <p>6 meeting?</p> <p>7 A. Yes.</p> <p>8 Q. And do you recall that they were joined at</p> <p>9 the podium by representative Ewing?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. And did -- do you recall that the</p> <p>12 representatives provided or read a letter during</p> <p>13 their public comment section of the meeting?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall that that letter said</p> <p>16 that they as representatives could not recognize the</p> <p>17 separation of God from state?</p> <p>18 A. Maybe. I can't recall specifically. I</p> <p>19 just know that they did read from a letter, but the</p> <p>20 content I can't recall.</p> <p>21 Q. Do you think it was appropriate that</p> <p>22 representatives stood at the podium and expressed</p> <p>23 their views as representatives on this issue?</p> <p>24 A. I'll say it struck me strange.</p>	<p>131</p> <p>1 Q. By whom?</p> <p>2 A. I can't specifically tell you. I mean in</p> <p>3 the course of these two years, whether it would be</p> <p>4 meeting someone on the street or after a Board</p> <p>5 meeting or whatever what have you, I have to tell</p> <p>6 you I've heard that sentiment but who, whom, I don't</p> <p>7 know.</p> <p>8 Q. More than once?</p> <p>9 A. Probably.</p> <p>10 Q. Would it be fair for me to understand that</p> <p>11 that is a common sentiment in the Indian River</p> <p>12 School District?</p> <p>13 A. Yes.</p> <p>14 Q. I am going to go back to a specific</p> <p>15 question, have you heard anyone say, again to you</p> <p>16 use your phrase, to your face, that they understand</p> <p>17 the School Board Prayer Policy as protecting</p> <p>18 Christian values?</p> <p>19 A. Repeat it, please?</p> <p>20 Q. Have you heard anyone say to your face that</p> <p>21 they view the School Board Prayer Policy as</p> <p>22 protecting Christian values?</p> <p>23 A. No.</p> <p>24 Q. Have you heard that sentiment expressed?</p>
<p>130</p> <p>1 Q. Why?</p> <p>2 A. In this climate, this day and time as we</p> <p>3 are sitting here knowing the delicateness of this</p> <p>4 issue at hand, I was surprised two public officials</p> <p>5 came forward in that light and expressed their</p> <p>6 opinions, being politicians.</p> <p>7 Q. Have you ever had anyone tell you that they</p> <p>8 see this case as about protecting Christian prayer?</p> <p>9 A. No.</p> <p>10 Q. Have you ever had anyone tell you that they</p> <p>11 see this case as about protecting Christian values?</p> <p>12 A. You are asking me if I had someone</p> <p>13 specifically in my face tell me that's what they</p> <p>14 believe or that's the statement made to such?</p> <p>15 Q. Yes, let me take that question first. So,</p> <p>16 let's take the specific question, have you ever had</p> <p>17 anyone actually say to your face that they believe</p> <p>18 that this case is about protecting Christian values?</p> <p>19 A. No.</p> <p>20 Q. Now, let's be a little more general, have</p> <p>21 you heard that sentiment expressed, or have you</p> <p>22 heard that sentiment -- I'll do it in pieces. Have</p> <p>23 you heard that sentiment expressed?</p> <p>24 A. Yes.</p>	<p>132</p> <p>1 A. No, I don't believe so.</p> <p>2 Q. So, it's the defense of this case that is</p> <p>3 viewed as defending Christian values?</p> <p>4 A. I believe.</p> <p>5 Q. Have you discussed with anyone whether the</p> <p>6 2006, the results of the 2006 School Board election</p> <p>7 was an endorsement of the stance the School Board</p> <p>8 has taken in support of School Board prayer?</p> <p>9 A. What the result of the Board election in</p> <p>10 2006?</p> <p>11 Q. An endorsement of the stance the School</p> <p>12 Board has taken in support of School Board prayer?</p> <p>13 A. Most definitely.</p> <p>14 Q. Is that also your view?</p> <p>15 A. That the stance was taken as such?</p> <p>16 Q. That the result was an endorsement of the</p> <p>17 stance that the School Board took?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever discussed with anyone whether</p> <p>20 someone who opposes School Board prayer could get</p> <p>21 elected to the School Board in Indian River?</p> <p>22 A. Interesting question.</p> <p>23 Q. Let me rephrase it. Let me just ask the</p> <p>24 question directly, do you believe that someone who</p>

<p>133</p> <p>1 is upfront about it, who says look I don't support</p> <p>2 School Board prayer, could be elected to the School</p> <p>3 Board in Indian River?</p> <p>4 A. Would you be referencing just this past</p> <p>5 election particularly or in general? Like five</p> <p>6 years from now or five years prior?</p> <p>7 Q. Let me first ask about the 2006 election.</p> <p>8 Do you believe that anybody who explicitly</p> <p>9 acknowledged that he was opposed to School Board</p> <p>10 prayer could be elected School Board in 2006?</p> <p>11 A. Board election 2006, if a candidate</p> <p>12 acknowledged that, more than likely in my opinion at</p> <p>13 that particular time he would not have been elected.</p> <p>14 Q. Regardless of whatever other policies and</p> <p>15 qualifications, correct?</p> <p>16 A. Correct.</p> <p>17 Q. In fact, one of the candidates in the 2006</p> <p>18 election was in your view an extraordinarily well</p> <p>19 qualified candidate, that was Jackie Wilson?</p> <p>20 A. That's correct.</p> <p>21 Q. And her position on School Board prayer was</p> <p>22 widely understood to be opposition, is that correct?</p> <p>23 I am not saying what her position was, it was widely</p> <p>24 reported in the Indian River School District to be</p>	<p>135</p> <p>1 Q. In your view was it a pivotal issue in the</p> <p>2 election?</p> <p>3 A. In my opinion, yes.</p> <p>4 Q. Is it your understanding that the ACLU is</p> <p>5 prosecuting this case?</p> <p>6 A. It's my understanding of that, yes.</p> <p>7 Q. And what is you -- what is the basis for</p> <p>8 that understanding?</p> <p>9 A. Initially the representative at the Board</p> <p>10 meeting with Mrs. Dobrich, and the subsequent</p> <p>11 meetings, a few meetings thereafter, so I have no</p> <p>12 reason to believe differently.</p> <p>13 Q. Have you ever heard anyone say, has anyone</p> <p>14 ever told you in the context of discussions of this</p> <p>15 issue, that the ACLU is antiChristian?</p> <p>16 A. I believe that that's very controversial in</p> <p>17 the entire public setting.</p> <p>18 Q. What do you mean by that?</p> <p>19 A. I think there is many varied opinions of</p> <p>20 that, whether or not the ACLU are antiChristian.</p> <p>21 Q. In the course of the -- well, since June of</p> <p>22 2004, has anyone said to you, or in your presence,</p> <p>23 that the ACLU is antiChristian?</p> <p>24 A. No.</p>
<p>134</p> <p>1 opposition to School Board prayer?</p> <p>2 A. I'd call that propaganda.</p> <p>3 Q. You heard that propaganda, though, didn't</p> <p>4 you?</p> <p>5 A. Yes.</p> <p>6 Q. Did you think it was false?</p> <p>7 A. Yes.</p> <p>8 Q. Mrs. Wilson actually offered a pretty</p> <p>9 nuanced position on School Board prayer, did she</p> <p>10 not?</p> <p>11 A. Yes.</p> <p>12 Q. Which people either understood or reported</p> <p>13 to be something different than what it was?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether any of the candidates</p> <p>16 in the 2006 election campaigned on the issue of</p> <p>17 School Board prayer?</p> <p>18 A. The candidate did not campaign on the issue</p> <p>19 of School Board prayer. None of the candidates did</p> <p>20 to my knowledge.</p> <p>21 Q. Did persons seeking to support the campaign</p> <p>22 of individual candidates make School Board prayer an</p> <p>23 issue?</p> <p>24 A. Yes.</p>	<p>136</p> <p>1 Q. Have you heard that sentiment expressed?</p> <p>2 A. On the street, yes.</p> <p>3 Q. Have you ever heard any of your colleagues</p> <p>4 on the Board express that opinion?</p> <p>5 A. Possibly, but I can't recall specifics, no.</p> <p>6 Q. Do you believe that the Board is obligated</p> <p>7 to represent the views of the majority of the</p> <p>8 constituents in the district?</p> <p>9 A. Yes.</p> <p>10 Q. Do you agree with Mrs. Bunting that this</p> <p>11 area is Christian?</p> <p>12 A. Not 100 percent.</p> <p>13 Q. That is you don't 100 percent agree or you</p> <p>14 don't agree that it's 100 percent Christian?</p> <p>15 A. I don't agree that it's 100 percent</p> <p>16 Christian. I am not sure what she was really</p> <p>17 implying, but I don't believe -- we have other</p> <p>18 faiths in this district, this area. They are, I</p> <p>19 would agree, they are a minority but we have other</p> <p>20 faiths here.</p> <p>21 Q. Do you believe that the fact that the --</p> <p>22 well, let me explore your answer a little bit. This</p> <p>23 is not a close thing, the vast majority of the</p> <p>24 constituents in Indian River are Christian, is that</p>

EXHIBIT 8

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually and as parents and next friend of ALEXANDER DOBRICH, 5 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, individually and as parents and next friend of 6 JORDAN DOE and JAMIE DOE, 7 Plaintiffs 8 vs. Civil Action No. 15-120 9 10 INDIAN RIVER SCHOOL DISTRICT, ET AL., 11 Defendants 12 13 DEPOSITION OF DONALD HATTIER, taken at the Indian River School District, 31 Hosier Street, 14 Selbyville, Delaware beginning at 9:36 a.m. on October 10, 2006 before David A. Sroka, Registered 15 Professional Reporter and Notary Public. 16 17 APPEARANCES: 18 THOMAS ALLINGHAM, ESQUIRE RICHARD HORVATH, ESQUIRE 19 BRIAN LENHARD, ESQUIRE P.O. Box 636 20 Wilmington, Delaware 19899-0636 For the Plaintiffs 21 22 WILCOX & FETZER 23 1330 King Street - Wilmington, DE 19801 (302) 655-0477 24 www.wilfet.com</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Dr. Donald G. 3 Hattier taken by the Plaintiff in the 4 matter of Dobrich, et al., versus Indian 5 River School District, et al., case number 6 15-120. This deposition is taking place at 7 31 Hosier Boulevard, Selbyville, Delaware. 8 We are going on the record on October 10, 9 2006 at approximately 9:37 a.m. 10 The court reporter is David Sroka 11 from the firm of Wilcox & Fetzer, 12 Wilmington, Delaware. My name is Lindsay 13 duPhily I'm the videotape specialist of 14 Discovery Video Services in association 15 with Wilcox & Fetzer. 16 Counsel will now introduce 17 themselves and then the court reporter will 18 swear in the witness. 19 MR. ALLINGHAM: Tom Allingham of 20 Skadden Arps. With me is Rick Horvath and 21 Brian Lenhard also of Skadden Arps, 22 representing the Plaintiffs. 23 MR. GOSSELIN: Jason Gosselin of 24 drinker Biddle & Reath representing the</p>
<p>1 2 3 JASON P. GOSSELIN, ESQUIRE Drinker Biddle & Reath LLP 4 One Logan Square Philadelphia, Pennsylvania 19103-6996 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 defendants. 2 DONALD HATTIER, 3 The Witness herein, called for examination by 4 the Plaintiffs, having been duly sworn to tell the 5 truth, the whole truth, and nothing but the truth, 6 was examined and testified as follows: 7 MR. ALLINGHAM: Jason, I just want 8 to put a couple of things on the record. 9 The first one is, it is my impression that 10 you are not going to be interrupting 11 this deposition very much, but I want you 12 to know that if you want to make relevance 13 objections feel free. I'm not going to 14 accept invitations to explain the relevance 15 of my questions, I think that they are 16 relevant. 17 Q. Mr. Hattier, I represent the Plaintiffs in 18 this action against the district and I'm going to be 19 asking you some questions. If you don't understand 20 anything that I ask please tell me, don't answer the 21 question. If you do answer it the judge and 22 ultimately even the jury will probably assume that 23 you did understand it, so if you do have a problem 24 with a question cut me off at the pass now, okay?</p>

<p>37</p> <p>1 track of things?</p> <p>2 A. Me, too.</p> <p>3 Q. It is your understanding that the</p> <p>4 Plaintiffs went to the ACLU for help and then</p> <p>5 retained pro bono counsel?</p> <p>6 A. That is my understanding.</p> <p>7 Q. Okay. Let me pose a more specific question</p> <p>8 then. What is your understanding about the ACLU's</p> <p>9 ongoing connection with the litigation post</p> <p>10 retention of pro bono counsel, if any?</p> <p>11 A. My understanding is that the ACLU would be</p> <p>12 guiding them, providing the counsel and basically</p> <p>13 running the case. I'm not an attorney so I do not</p> <p>14 understand the intricacies of running a case like</p> <p>15 this.</p> <p>16 Q. And where did you get that understanding?</p> <p>17 A. Reading the newspapers, listening to what's</p> <p>18 on the radio, just understanding how the ACLU</p> <p>19 generally does these kind of cases based on what</p> <p>20 I've read in the past.</p> <p>21 Q. You understand that the ACLU has been made</p> <p>22 an important part of the dialogue on this litigation</p> <p>23 and the positions that the Board has taken in</p> <p>24 connection with this litigation, correct?</p>	<p>39</p> <p>1 off by the ACLU and I know the ACLU has a number of</p> <p>2 supporters and I believe that they have done some</p> <p>3 very good things in the past and they will probably</p> <p>4 do some good things in the future, but I think this</p> <p>5 issue stands or falls regardless of what the ACLU</p> <p>6 does or doesn't do.</p> <p>7 Q. I understand Dr. Hattier that that is your</p> <p>8 view and I assure you that I do respect it. My</p> <p>9 question, though, had to do with your concern about</p> <p>10 the reasons for the development of the consensus</p> <p>11 among your constituents, that is to say are you</p> <p>12 worried that they are making their decisions or</p> <p>13 formulating their positions based in whole or in</p> <p>14 part on the ACLU's alleged connection to this</p> <p>15 lawsuit?</p> <p>16 A. No, sir.</p> <p>17 Q. Why is that it?</p> <p>18 A. Because I believe that the people of this</p> <p>19 area generally, excuse me, genuinely believe that</p> <p>20 the prayer before School Board meeting as we have</p> <p>21 outlined it is something that is part and parcel of</p> <p>22 the fabric of the community that has been going on</p> <p>23 for many, many years. Congress does it,</p> <p>24 legislatures do it, it's printed above the halls of</p>
<p>38</p> <p>1 A. Rephrase that please?</p> <p>2 MR. GOSSELIN: Objection.</p> <p>3 Q. I'm trying to among all the people who have</p> <p>4 spoken up in print, to you personally, a significant</p> <p>5 portion of them have commented negatively or maybe</p> <p>6 positively on the ACLU's connection to this</p> <p>7 litigation, correct?</p> <p>8 A. I'd say that's a fair statement.</p> <p>9 Q. Are you concerned at all that the consensus</p> <p>10 that you've identified among your constituencies is</p> <p>11 affected by the ACLU's connection to this lawsuit?</p> <p>12 MR. GOSSELIN: Objection.</p> <p>13 A. No.</p> <p>14 Q. And is that because you are confident that</p> <p>15 the ACLU is in fact connected to this lawsuit?</p> <p>16 A. No, that's not why.</p> <p>17 Q. You just don't care whether people are</p> <p>18 making their decision based on the ACLU's</p> <p>19 connection?</p> <p>20 A. No.</p> <p>21 Q. Explain to me why you are not concerned?</p> <p>22 A. Because I think that the issue rises beyond</p> <p>23 the ACLU. I mean they might be the attorneys in</p> <p>24 this particular case and people can be turned on or</p>	<p>40</p> <p>1 the Supreme Court and I believe that they view this</p> <p>2 as simply something that is either right or not, and</p> <p>3 I don't think that it has much to do with what the</p> <p>4 ACLU's feelings are.</p> <p>5 You guys just happen to be the messenger,</p> <p>6 well not the messenger, you guys just happen to be</p> <p>7 the ones working with the other side.</p> <p>8 Q. You guys being?</p> <p>9 A. I'm assuming, sir that you are working with</p> <p>10 or associated with the ACLU and if that's a false</p> <p>11 assumption then I would stand corrected.</p> <p>12 Q. And you've given me the basis for that</p> <p>13 assumption already, correct?</p> <p>14 A. Well, I'm assuming that I'm assuming that</p> <p>15 since the ACLU has become involved in the case and</p> <p>16 you are the attorney working with the Does and the</p> <p>17 Dobriches that you would be associated with them.</p> <p>18 And if that's not a valid assuming please correct</p> <p>19 me.</p> <p>20 Q. When you gave your answer about Congress</p> <p>21 opening its sessions and it being printed above the</p> <p>22 doors of the Supreme Court what did you mean by the</p> <p>23 it?</p> <p>24 A. Specifically Congress opens with a prayer</p>

<p>81</p> <p>1 why don't we send you some materials?</p> <p>2 A. Yes.</p> <p>3 Q. And then they send you some materials?</p> <p>4 A. Yes.</p> <p>5 Q. Which constituted three cases and a</p> <p>6 discussion of those cases?</p> <p>7 A. Essentially that is what I recall, yes.</p> <p>8 Q. Okay, and do you have a copy of that</p> <p>9 package still in your file?</p> <p>10 A. No, sir.</p> <p>11 Q. What did you do with it?</p> <p>12 A. Pitched it same as I do most things.</p> <p>13 Q. Was that package considered -- distributed</p> <p>14 to Board members?</p> <p>15 A. It was distributed to the Board members, I</p> <p>16 made copies of it at my expense to that they would</p> <p>17 have some better understanding of what, again I'm</p> <p>18 not an attorney, let us be clear about that, but as</p> <p>19 a lay person what I understand.</p> <p>20 Q. And did you simply distribute the ADF</p> <p>21 package or did you provide a summary of it as you</p> <p>22 understood it?</p> <p>23 A. No, sir I simply provided the package.</p> <p>24 Q. And did you thereafter have any further</p>	<p>83</p> <p>1 conversations?</p> <p>2 A. I'm making an assumption here but I believe</p> <p>3 that there were both.</p> <p>4 Q. And I think we have been over this already,</p> <p>5 your best guess is that it would be Miss Hobbs who</p> <p>6 had those conversations or those communications?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Now, in describing the Alliance Defense</p> <p>9 Fund you told me earlier that you view them as being</p> <p>10 allied with more traditional American values, do you</p> <p>11 recall that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What do you mean by that?</p> <p>14 A. That's a good question. I see them as</p> <p>15 supporting more of what, certainly what I grew up</p> <p>16 with as a young person in the 1950s, and just</p> <p>17 supporting more of a family unity, more traditional</p> <p>18 marriage, more traditional child rearing, the First</p> <p>19 Amendment I think there are probably more in favor</p> <p>20 of things like prayer at legislative sessions, board</p> <p>21 meetings opening with things like that.</p> <p>22 Q. Do you view opening the School Board</p> <p>23 meetings with a prayer as consistent with</p> <p>24 traditional American values as you understand them?</p>
<p>82</p> <p>1 conversations with ADF representatives?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. E-mail correspondence?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. And I take it that you have no light to</p> <p>6 shed on why an ADF representative would have said</p> <p>7 that he represented the Indian River School District</p> <p>8 in connection with this litigation?</p> <p>9 A. As I understand it the ADF had expressed a</p> <p>10 willingness to work with us, but that they were not</p> <p>11 able to find a Delaware based attorney that could</p> <p>12 work with us. That's as I understand it issue. I</p> <p>13 think the closest they came was Kentucky, and don't</p> <p>14 ask me why that sticks in my memory.</p> <p>15 Q. I thought that's where they were, but I</p> <p>16 might be wrong. Okay, I've asked you questions</p> <p>17 about your communications with ADF representatives.</p> <p>18 Do you know of your own knowledge whether there were</p> <p>19 any communications following the receipt of the</p> <p>20 August package, let's call it, between any</p> <p>21 representative of the district and any</p> <p>22 representative of the Alliance Defense Fund?</p> <p>23 A. I believe that there were.</p> <p>24 Q. Written communications or telephone</p>	<p>84</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you view prayer in school during the</p> <p>3 schools, during the school day as consistent with</p> <p>4 traditional American values?</p> <p>5 A. If you are a student taking a test, yes</p> <p>6 sir.</p> <p>7 Q. Do you view district or teacher sponsored</p> <p>8 or led prayer in school as consistent with</p> <p>9 traditional American values.</p> <p>10 MR. GOSSELIN: Objection, don't</p> <p>11 answer that.</p> <p>12 MR. ALLINGHAM: Attorney/client</p> <p>13 privilege?</p> <p>14 MR. GOSSELIN: No. You can try to</p> <p>15 bring in the rest of the issues in the case</p> <p>16 every time we have one of these go off on a</p> <p>17 tangent --</p> <p>18 MR. ALLINGHAM: Relevance or</p> <p>19 privilege?</p> <p>20 MR. GOSSELIN: The court order.</p> <p>21 MR. ALLINGHAM: Relevance?</p> <p>22 MR. GOSSELIN: Well, no, the court</p> <p>23 order, there is a court order describing</p> <p>24 what the topics of discovery can be in this</p>

<p style="text-align: right;">85</p> <p>1 phase of the litigation.</p> <p>2 Q. Did the district ever retain Mr. Neuberger</p> <p>3 to be its attorney?</p> <p>4 A. No, sir.</p> <p>5 Q. Did the district ever retain the Rutherford</p> <p>6 Institute to be it's attorney?</p> <p>7 A. No, sir.</p> <p>8 Q. Did the Board ever, Board of the district</p> <p>9 ever consider retaining either Mr. Neuberger or the</p> <p>10 Rutherford Institute as its attorney?</p> <p>11 A. Yes, sir.</p> <p>12 Q. When was that?</p> <p>13 A. Again time frame on or about September,</p> <p>14 October of 2004. Possibly as late as November.</p> <p>15 Q. And I take it the decision was made not to</p> <p>16 retain Mr. Neuberger and the Rutherford Institute?</p> <p>17 A. No, sir.</p> <p>18 Q. Tell me how it came to be that they did not</p> <p>19 represent you?</p> <p>20 A. Mr. Neuberger chose not to represent us.</p> <p>21 Q. Did he tell you why?</p> <p>22 A. Yes, sir.</p> <p>23 Q. What did he say?</p> <p>24 A. He felt that we were not a unified body --</p>	<p style="text-align: right;">87</p> <p>1 Q. Were the distributed to the Board?</p> <p>2 A. Yes, they were.</p> <p>3 Q. Do you still a copy of those materials that</p> <p>4 he distributed?</p> <p>5 A. No, sir.</p> <p>6 Q. We talked about the Board's consideration</p> <p>7 of retaining the Alliance Defense Fund or the</p> <p>8 Rutherford Institute. The Board had an attorney at</p> <p>9 that time for regular Board matters, is that</p> <p>10 correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Who was that?</p> <p>13 A. That was Mr. Jim Griffin.</p> <p>14 Q. And did the Board consult Mr. Griffin on</p> <p>15 the issues presented by this lawsuit?</p> <p>16 A. Yes, the Board did.</p> <p>17 Q. But ultimately decided not to use</p> <p>18 Mr. Griffin for this purpose?</p> <p>19 A. That is correct.</p> <p>20 Q. Why was that?</p> <p>21 A. I think the general feeling was that we are</p> <p>22 dealing with First Amendment constitutional law and</p> <p>23 Mr. Griffin is a general attorney and much like you</p> <p>24 would not see me for low back surgery, the idea was</p>
<p style="text-align: right;">86</p> <p>1 well let me back up. Mr. Neuberger came and spoke</p> <p>2 to us one evening about all of this. He came</p> <p>3 extremely well prepared. He came prepared with what</p> <p>4 I considered to be a lot of precedents and other</p> <p>5 material. A lot of discussions on the issue, and he</p> <p>6 gave us some good information. He essentially gave</p> <p>7 us the choice of accepting him or rejecting him that</p> <p>8 evenings.</p> <p>9 Now, in my family my father and mother</p> <p>10 always taught me that is somebody puts it to you</p> <p>11 that way that basically you probably want to walk</p> <p>12 away from it for at least 24 hours. I don't buy</p> <p>13 anything on the spot. I walk away from it, I will</p> <p>14 think about it for 24 hours, if it's a good deal we</p> <p>15 will come back to it. That apparently in my opinion</p> <p>16 offended Mr. Neuberger and by the following day he</p> <p>17 had withdrawn his offer. This is as I understand</p> <p>18 it.</p> <p>19 Q. Seems a little imperious.</p> <p>20 MR. GOSSELIN: Objection.</p> <p>21 A. No comment.</p> <p>22 Q. You mentioned that Mr. Neuberger came very</p> <p>23 well prepared, did he bring a package of materials?</p> <p>24 A. Yes, he did.</p>	<p style="text-align: right;">88</p> <p>1 to speak to somebody who was more qualified or</p> <p>2 competent in that particular area of law.</p> <p>3 Q. So, I take it you didn't ask Mr. Griffin</p> <p>4 for advise on this litigation?</p> <p>5 A. We asked his opinion.</p> <p>6 Q. What did he tell you?</p> <p>7 MR. GOSSELIN: Objection, don't</p> <p>8 answer that.</p> <p>9 Q. Did Mr. Griffin distribute any materials to</p> <p>10 the Board on this issue?</p> <p>11 A. I believe that he did send a memorandum of</p> <p>12 sorts to Mrs. Hobbs which was photocopied to us.</p> <p>13 Q. But I think you discarded your copy?</p> <p>14 A. Absolutely.</p> <p>15 Q. I don't want you to tell me what it was,</p> <p>16 but do you recall the substance of the advise that</p> <p>17 Mr. Griffin gave the Board?</p> <p>18 A. Yes.</p> <p>19 Q. I apologize, I'm just making a record, Mr.</p> <p>20 Gosselin is going to object. What was the substance</p> <p>21 of the advice that Mr. Griffin gave the Board on the</p> <p>22 issues presented by this lawsuit?</p> <p>23 MR. GOSSELIN: Objection,</p> <p>24 don't answer that. Is there a good faith</p>

<p style="text-align: right;">121</p> <p>1 post, is that post that you wrote and posted to the</p> <p>2 WMGD forum?</p> <p>3 A. Yes, it is.</p> <p>4 Q. And what's reflected in that post you</p> <p>5 believed to be, and continue to believe that that is</p> <p>6 reflective of your beliefs?</p> <p>7 A. Yes.</p> <p>8 Q. Now, on 832, same questions, is it correct</p> <p>9 that this is a post that you wrote, dghattierdc?</p> <p>10 A. Yes.</p> <p>11 Q. And it reflected your views as of that</p> <p>12 time?</p> <p>13 A. Yes.</p> <p>14 Q. And it reflects your views today?</p> <p>15 A. Yes.</p> <p>16 Q. At the end of that post you write,</p> <p>17 unfortunately with historic research lots of things</p> <p>18 can be taken out of context and argue in a number of</p> <p>19 ways. It is best to look at the whole body of what</p> <p>20 the founders said and did and not just parts of it.</p> <p>21 A. Yes.</p> <p>22 Q. You did not intend in this post to provide</p> <p>23 to the reader the whole breadth of what the founders</p> <p>24 said and did, did you?</p>	<p style="text-align: right;">123</p> <p>1 Christ. And either way it appears to be telling</p> <p>2 someone how to use their free speech. Does that</p> <p>3 accurately reflect your views?</p> <p>4 A. Yes. You can read on, which violates the</p> <p>5 First Amendment protections against free speech. A</p> <p>6 true catch 22.</p> <p>7 Q. In that post you write a Christian without</p> <p>8 mentioning Christ is denying Christ?</p> <p>9 A. Yes.</p> <p>10 Q. Which is the question that I asked earlier?</p> <p>11 A. I was perhaps more specific in this post</p> <p>12 than I'm in my own personal life, but as I indicated</p> <p>13 earlier to lots of Christians without mentioning</p> <p>14 Christ is denying Christ, if you don't mention</p> <p>15 Christ for a lot of Christians.</p> <p>16 Q. So, for you personally to offer a prayer</p> <p>17 that doesn't mention Christ is not denying Christ?</p> <p>18 A. Not at all.</p> <p>19 Q. But you believe that there are Christians</p> <p>20 for whom offering up a prayer that doesn't mention</p> <p>21 Christ would be denying Christ?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And would offering up no prayer at all be</p> <p>24 denying Christ for such Christians?</p>
<p style="text-align: right;">122</p> <p>1 A. No.</p> <p>2 Q. As with all people you were picking and</p> <p>3 choosing?</p> <p>4 MR. GOSSELIN: Objection.</p> <p>5 A. I believe that what I was doing was</p> <p>6 countering some of the discussions in the previous</p> <p>7 postings.</p> <p>8 Q. Which also offered only a partial view of</p> <p>9 what the founds said?</p> <p>10 A. Correct.</p> <p>11 Q. Turn if you would to 829. In this post you</p> <p>12 will see it's dated March 17, 2006, dghattierdc and</p> <p>13 this is a post that you wrote and which you believe</p> <p>14 belief to be accurate?</p> <p>15 A. Yes.</p> <p>16 Q. And reflected your views at the time and</p> <p>17 today?</p> <p>18 A. Yes, I believe so.</p> <p>19 Q. Down at the bottom of the page you write,</p> <p>20 in my mind a prayer, be it it sectarian or</p> <p>21 nonsectarian still steps on someone's toes. For</p> <p>22 those who don't like prayer of any kind it's</p> <p>23 offensive, for a Muslim it's really bad, for a</p> <p>24 Christian without mentioning Christ it's denying</p>	<p style="text-align: right;">124</p> <p>1 A. No, but it would be denying free speech.</p> <p>2 Q. Page 820. Is this a post that you wrote?</p> <p>3 A. Yes.</p> <p>4 Q. And which you believe to be accurate</p> <p>5 then --</p> <p>6 A. Yes.</p> <p>7 Q. Believe to be accurate then and now?</p> <p>8 A. Yes.</p> <p>9 Q. The last paragraph of this post refers to</p> <p>10 your belief that support for the revolution was</p> <p>11 never 100 percent. My reading of history shows</p> <p>12 maybe 35 to 40 percent.</p> <p>13 MR. GOSSELIN: What page are we on</p> <p>14 here?</p> <p>15 A. Page 821.</p> <p>16 MR. ALLINGHAM: Page 821 at the</p> <p>17 bottom.</p> <p>18 Q. A little bit earlier you say, as the</p> <p>19 founders once said, and for the support of this</p> <p>20 declaration with a firm reliance on the protection</p> <p>21 of the divine providence, we mutually pledge to each</p> <p>22 other our lives, our fortunes and our sacred honor?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And then you note that remember support for</p>

<p style="text-align: right;">157</p> <p>1 Q. How did it change the practice?</p> <p>2 A. Previous time periods I seem to recall one</p> <p>3 or two individuals opening with prayer on somewhat</p> <p>4 regular basis, at least for the parts that I paid</p> <p>5 attention to. I believe that as a result of this we</p> <p>6 have included a lot more people and rotated it</p> <p>7 around on a more regular basis than we certainly did</p> <p>8 prior to that.</p> <p>9 Q. Was that a change that you agreed with?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you do view that as beneficial?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Why did you view it as beneficial?</p> <p>14 A. Because it included more people's opinion.</p> <p>15 Q. Any why is it useful to include more</p> <p>16 people's opinions?</p> <p>17 A. If we are representing a broad</p> <p>18 cross-section of the public from five different</p> <p>19 areas with ten different individuals, it would be</p> <p>20 nice if we all had an opportunity to be heard.</p> <p>21 Q. Why wouldn't that same policy as you</p> <p>22 suggest that you should have prayers from a broader</p> <p>23 spectrum than merely the ten Board members?</p> <p>24 A. Because if my reading of the law is</p>	<p style="text-align: right;">159</p> <p>1 is reflected here. Do you recall that on the day</p> <p>2 before the have large meeting on August 24th the</p> <p>3 Board held a special meeting at the Sussex Central</p> <p>4 Middle School Library?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall for what purpose that special</p> <p>7 meeting was called?</p> <p>8 A. If I'm not mistaken it was called to</p> <p>9 discuss, geez, I believe it was called to discuss</p> <p>10 the entire issue of the prayer at the graduation as</p> <p>11 well as potential prayers before School Board</p> <p>12 meeting. That's what I seem to remember.</p> <p>13 Q. Sort of the global prayer in school issue?</p> <p>14 A. Yes, sir, it was a global in my mind it was</p> <p>15 a global conversation, that's a good word.</p> <p>16 MR. ALLINGHAM: Okay, off the</p> <p>17 record for a minute.</p> <p>18 MS. DUPHILY: We are going off the</p> <p>19 record at approximately 2:07 p.m..</p> <p>20 (WHEREUPON a brief recess was</p> <p>21 taken)</p> <p>22 MS. DUPHILY: Back on the</p> <p>23 record at approximately 2:11 p.m..</p> <p>24 MR. ALLINGHAM: Let's mark as</p>
<p style="text-align: right;">158</p> <p>1 correct, and again I'm not an attorney, but if my</p> <p>2 reading of the law is correct, if we invite outside</p> <p>3 people to come in you actually increase the</p> <p>4 likelihood of there being a problem. In some of the</p> <p>5 cases that I read it seemed to me that it just</p> <p>6 seemed to increase the potential for problems.</p> <p>7 Q. All right coming back to the issue of the</p> <p>8 discussion of the Rutherford draft, Hattier Exhibit</p> <p>9 12, I'm going to try to help you, to quote Jerry</p> <p>10 McGuire have you help me, in figuring out when this</p> <p>11 policy was first discussed.</p> <p>12 MR. ALLINGHAM: I want to mark as</p> <p>13 Hattier Exhibit 13 a document bearing Bates</p> <p>14 number BPD1291 and 1292.</p> <p>15 (WHEREUPON Hattier Exhibit 13 was</p> <p>16 marked for identification)</p> <p>17 Q. Dr. Hattier, you've been in litigation</p> <p>18 before so you may know, but I always explain to</p> <p>19 people, redacted is a lawyer's word meant to</p> <p>20 indicate that some material has been taken out or</p> <p>21 masked from the document.</p> <p>22 A. Correct.</p> <p>23 Q. But some portion of the minutes of a</p> <p>24 special Board meeting on August 23 executive session</p>	<p style="text-align: right;">160</p> <p>1 Hattier Exhibit 14 a document bearing Bates</p> <p>2 numbers IRSD45360 through 5362.</p> <p>3 (WHEREUPON Hattier Exhibit 14 was</p> <p>4 marked for identification.)</p> <p>5 Q. I'm trying to just put together how this</p> <p>6 worked, Dr. Hattier. So, let me start with Hattier</p> <p>7 Exhibit 14 which is, I believe the minutes of the</p> <p>8 special meeting on Monday August 23, is that</p> <p>9 correct?</p> <p>10 A. Yes, sir, that's what it appears to be.</p> <p>11 Q. And you are reflected as present both on</p> <p>12 the roll call which is the last page and I think</p> <p>13 also on the roll call reflection on the second page</p> <p>14 of the minutes?</p> <p>15 A. Correct, sir.</p> <p>16 Q. The meeting was called to order at 7</p> <p>17 o'clock and moved immediately on a motion by</p> <p>18 Mr. Helms, seconded by you to go into executive</p> <p>19 session to seek advice from our legal counsel</p> <p>20 regarding potential litigation. And right under</p> <p>21 that are A and B, strategy session to discuss</p> <p>22 collective bargaining, pending or potential</p> <p>23 litigation and such other business as may properly</p> <p>24 be discussed in an executive session. Am I correct</p>

<p style="text-align: right;">189</p> <p>1 Q. The decision of the Board let me start</p> <p>2 again. Did the Board arrive at a consensus that it</p> <p>3 was a legislative body?</p> <p>4 A. I believe we did.</p> <p>5 Q. Do you know when it arrived at that</p> <p>6 consensus?</p> <p>7 A. No, sir, I do not. Somewhere through all</p> <p>8 of this.</p> <p>9 Q. Well, there was this long four hour</p> <p>10 meeting, did the Board arrive at it at that</p> <p>11 executive session meeting or was it later than that?</p> <p>12 A. I'm going to make a guess that we had</p> <p>13 arrived as a body by the time that that meeting was</p> <p>14 over that that is where we were.</p> <p>15 Q. Okay, the conclusion at the, and the only</p> <p>16 part of this executive session minutes that I have,</p> <p>17 says it was not felt that a decision could be made</p> <p>18 there evening regarding whether or not to change our</p> <p>19 past practice.</p> <p>20 My question to you is, if you had arrived</p> <p>21 at a consensus that the Board was a legislative</p> <p>22 body, and if it was a legislative body it fell under</p> <p>23 Marsh, and if it fell under Marsh it could open its</p> <p>24 meetings with a prayer, and all of your constituents</p>	<p style="text-align: right;">191</p> <p>1 A. Right.</p> <p>2 Q. You will see that under other visitors and</p> <p>3 staff in attendance, Mr. Neuberger is not listed but</p> <p>4 Mr. Griffin is?</p> <p>5 A. August which date, sir?</p> <p>6 Q. August 23, it's Exhibit 14. Not the</p> <p>7 executive committee, the regular meeting. If you</p> <p>8 look at the stickers you will see the exhibit</p> <p>9 numbers?</p> <p>10 A. Well, then that wasn't the meeting he was</p> <p>11 here. Okay then he wasn't here that meeting then it</p> <p>12 means that we met some time in September.</p> <p>13 Q. The person who was present at that meeting</p> <p>14 was Mr. Griffin, is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And the Board had an opportunity to discuss</p> <p>17 with Mr. Griffin whether the Board was a legislative</p> <p>18 body?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did the Board discuss with Mr. Griffin</p> <p>21 whether the Board was a legislative body?</p> <p>22 A. I believe we probably did.</p> <p>23 Q. So, you had already gotten advice from a</p> <p>24 lawyer about whether the Board was an executive body</p>
<p style="text-align: right;">190</p> <p>1 wanted you to open your meetings with a prayer, why</p> <p>2 was it that it was not felt by the Board presumably</p> <p>3 that a decision could be made this evening regarding</p> <p>4 whether or not to change our past practice?</p> <p>5 A. I believe that was because as lay people</p> <p>6 we were looking at that as an opinion rather than a</p> <p>7 statement of fact and that we probably still needed</p> <p>8 more guidance on the issue in order to proceed.</p> <p>9 Q. Okay. So, as lay people you arrived at a</p> <p>10 consensus but you wanted more information?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Where did you think that you were going to</p> <p>13 get that information?</p> <p>14 A. From an attorney.</p> <p>15 Q. Was there an attorney present during this</p> <p>16 four hour 15 minute executive session?</p> <p>17 A. If I remember right this may have been the</p> <p>18 time period where Mr. Neuberger talked to us. It</p> <p>19 may have been, okay, I don't specifically recall.</p> <p>20 It was tie either some time in August or possibly</p> <p>21 some time in September when he talked to us. I do</p> <p>22 remember one very long meeting that we had.</p> <p>23 Q. If you look at the minutes of August 23rd,</p> <p>24 which is Exhibit 14?</p>	<p style="text-align: right;">192</p> <p>1 as of the time that you concluded that you couldn't</p> <p>2 make a decision?</p> <p>3 A. You know, as I stated to you earlier, sir</p> <p>4 Mr. Griffin is a general attorney and for what we</p> <p>5 were discussing and with the potential for</p> <p>6 litigation we felt that it would be better to pick a</p> <p>7 different attorney for another opinion.</p> <p>8 In my opinion Mr. Griffin, and he is a find</p> <p>9 attorney, Mr. Griffin has served our district</p> <p>10 extremely well over the years, but he is a general</p> <p>11 attorney and his issues do not run into the First</p> <p>12 Amendment as a general rule. He would do contract</p> <p>13 law he would do personal issues, but, you know,</p> <p>14 First Amendment issues are not the sort of thing</p> <p>15 that routinely come across his desk.</p> <p>16 Q. So, you wanted to consult a First Amendment</p> <p>17 specialist?</p> <p>18 A. That was my general feeling, yes, sir.</p> <p>19 Q. Was that the consensus of the Board by the</p> <p>20 end of the August 23 executive session?</p> <p>21 A. I would have to speculate that the answer</p> <p>22 is yes.</p> <p>23 Q. And did somebody say in words or substance</p> <p>24 we better get ourselves a First Amendment Specialist</p>

<p style="text-align: right;">197</p> <p>1 A. No, I did not.</p> <p>2 Q. At the special meeting on August 23 was</p> <p>3 there any discussion of the fact that there was</p> <p>4 going to be a regular meeting on August 24?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And tell me what the substance of that</p> <p>7 discussion was?</p> <p>8 A. That we were going to discuss it on August</p> <p>9 24th?</p> <p>10 Q. Was there anything that you would be able</p> <p>11 to discuss on August 24th that you couldn't have</p> <p>12 discussed on August 23rd?</p> <p>13 A. Yes.</p> <p>14 Q. What was that?</p> <p>15 A. Because if you figure that we blocked out</p> <p>16 four hours to simply discuss all of this in one</p> <p>17 meeting that would have put us home Wednesday some</p> <p>18 time at 3:30 or 4 o'clock in the morning and since</p> <p>19 virtually all School Board members are volunteers</p> <p>20 non-paid and we have other jobs we would not be able</p> <p>21 to discuss the issue all in one shot.</p> <p>22 This was a way for us get together and</p> <p>23 discuss the issue and then still be able to do the</p> <p>24 School Board functions the next day. That's how I</p>	<p style="text-align: right;">199</p> <p>1 A. Yes, sir.</p> <p>2 Q. Were you invited to go on that talk show?</p> <p>3 A. No, I'm pretty sure I just called to answer</p> <p>4 some of the public's questions about it.</p> <p>5 Q. Was it your hope that the public's interest</p> <p>6 would be engaged in this important issue by your</p> <p>7 appearing on the WGMD talk show?</p> <p>8 A. No, sir.</p> <p>9 Q. What was your hope in appearing --</p> <p>10 A. That I would be able to clear up the</p> <p>11 factual misconceptions which were out there.</p> <p>12 Q. So, you had identified some factual</p> <p>13 misconceptions?</p> <p>14 A. Quite a few.</p> <p>15 Q. Can you tell me what they were?</p> <p>16 A. Yes, sir there were a lot of people who</p> <p>17 were saying we were taking prayer out of school all</p> <p>18 together. When essentially that was something that</p> <p>19 had already been done a long time ago. There were</p> <p>20 people who -- it essentially ran along those lines.</p> <p>21 In other words, they did not understand what the</p> <p>22 real issues in the case were and the way I</p> <p>23 understood them at the time and still do, is that we</p> <p>24 had the issue of any kind of a prayer or benediction</p>
<p style="text-align: right;">198</p> <p>1 looked at looked it.</p> <p>2 Q. Sure, but as you said the reason that you</p> <p>3 couldn't make a decision on August 23rd was that you</p> <p>4 wanted to get the advice of a First Amendment</p> <p>5 specialist?</p> <p>6 A. Right.</p> <p>7 Q. Other than Mr. Griffin and different from</p> <p>8 Mr. Griffin on the issue of whether the Board was a</p> <p>9 legislative body or not. You weren't going to have</p> <p>10 that by August 24th were you?</p> <p>11 A. No, I don't believe we were.</p> <p>12 Q. Was there any discussion of, you know,</p> <p>13 where you should have that August 24th meeting?</p> <p>14 A. In the normal rotation.</p> <p>15 Q. Was there any discussion of whether there</p> <p>16 was an overflow expected?</p> <p>17 A. No, sir, I don't believe that came up.</p> <p>18 Q. Did you expect there to be an overflow at</p> <p>19 that August 24 meeting?</p> <p>20 A. No, I did not.</p> <p>21 Q. Prior to the August 24 meeting you had had</p> <p>22 occasion to discuss the issue of School Board prayer</p> <p>23 on a talk show hosted by a Dan Gaffney, is that</p> <p>24 right?</p>	<p style="text-align: right;">200</p> <p>1 at a graduation, Baccalaureate ceremony and prayer</p> <p>2 before the School Board meetings.</p> <p>3 I mean essentially that's what it was, it</p> <p>4 had nothing to do with the way I saw it teachers</p> <p>5 leading kids in prayer in schools or offering an</p> <p>6 early morning prayer over the loud speaker. For</p> <p>7 some reason a good number of the general public</p> <p>8 seemed to have felt that that was something that we</p> <p>9 were still doing when in point of fact that's been</p> <p>10 out of the program for many many, many years.</p> <p>11 That's if it ever was in our program to begin with.</p> <p>12 And I'm not aware of any of that since consolidation</p> <p>13 around the 1970s.</p> <p>14 Q. How did the misconceptions come to your</p> <p>15 attention?</p> <p>16 A. By the types of phone calls and comments</p> <p>17 and by the types that we talked about earlier. I</p> <p>18 mean if you go back and look at some of the letters</p> <p>19 to the editor that were written there, it was quite</p> <p>20 clear that a lot of people did not understand all of</p> <p>21 it.</p> <p>22 Q. I might have asked you this question and it</p> <p>23 just got lost in my backs and forths. Did you</p> <p>24 suspect there to be an overflow at the August</p>

<p style="text-align: right;">217</p> <p>1 policy.</p> <p>2 Q. Do you recall, do you have a specific</p> <p>3 recollection in your mind of the tenor of the public</p> <p>4 comments at the August 24 meeting?</p> <p>5 A. Everything from very respectful to very</p> <p>6 angry. I mean it swung a huge gamut.</p> <p>7 Q. Were there comments that you found</p> <p>8 offensive?</p> <p>9 A. Yes.</p> <p>10 Q. Was anything done to curb the offensiveness</p> <p>11 of those comments?</p> <p>12 A. As is noted under the public comments</p> <p>13 section, it is our job to listen, not, it is a one</p> <p>14 way conversation. It is not our policy to comment</p> <p>15 as a rule on what people say unless they get out of</p> <p>16 line in terms of mentioning names. That has</p> <p>17 happened in which case we have shut it down. I</p> <p>18 think in some cases here we probably could have told</p> <p>19 people to tone it down and didn't.</p> <p>20 I mean like I said there were some things</p> <p>21 that in my opinion went a little bit out of hand.</p> <p>22 But when you are dealing with a large group of</p> <p>23 people like that and everybody does have a right to</p> <p>24 speak, you do not screen beforehand what they</p>	<p style="text-align: right;">219</p> <p>1 preserving what has been in the community for the</p> <p>2 last 30 or 35 years. Again, everybody looks at</p> <p>3 religious in their own way. Some people understood</p> <p>4 it for the splenification that it is and some people</p> <p>5 simply felt that something was being stripped away</p> <p>6 from us period. So, I don't think you can lump them</p> <p>7 all into one category.</p> <p>8 Q. Well, fair enough, I didn't mean suggest</p> <p>9 that there was unanimity of expression, but didn't</p> <p>10 you understand a number of the comments to be urging</p> <p>11 the Board to preserve the existing practice in order</p> <p>12 to preserve Christian values?</p> <p>13 A. Some people --</p> <p>14 MR. GOSSELIN: Objection.</p> <p>15 A. I'm sorry, sir.</p> <p>16 MR. GOSSELIN: Wait until he is</p> <p>17 done asking the question, give me a chance to object</p> <p>18 which I am doing here. Now you can answer the</p> <p>19 question.</p> <p>20 A. Okay, thank you. I apologize. I'm certain</p> <p>21 there were people who felt that way and did that,</p> <p>22 yes.</p> <p>23 Q. Look at Hattier Exhibit 9 which is the</p> <p>24 policy itself. You told me that it changed the</p>
<p style="text-align: right;">218</p> <p>1 are going to say.</p> <p>2 Q. Did the comments at the public comment</p> <p>3 portion of the August 24 meeting confirm your view</p> <p>4 that many members of the public understood the</p> <p>5 School Board Prayer Policy to be an issue of whether</p> <p>6 or not the Board would be preserving Christian</p> <p>7 values.</p> <p>8 A. No. As a matter of fact, if I came away</p> <p>9 with any impression at all it's that a huge amount</p> <p>10 of people did not understand what the real issue was</p> <p>11 and if you have listened to it, I think you would</p> <p>12 agree that a lot of people did not really understand</p> <p>13 what this was about.</p> <p>14 Most of them in my opinion felt that more</p> <p>15 or what was happening in here was changing something</p> <p>16 that had been in our community for again at least</p> <p>17 the 30 some odd years that we can document for sure,</p> <p>18 and probably prior to that.</p> <p>19 Q. Yes, and if that practice was preserved as</p> <p>20 people were urging, you understood that they were</p> <p>21 urging its preservation as a way to preserve</p> <p>22 Christian values, isn't that correct?</p> <p>23 MR. GOSSELIN: Objection.</p> <p>24 A. I would have seen it more as a way of</p>	<p style="text-align: right;">220</p> <p>1 Board's practice on prayer at regular Board meetings</p> <p>2 in one respect, which is that it expanded the number</p> <p>3 of Board members offered the opportunity to</p> <p>4 solemnize the proceedings either with a prayer or a</p> <p>5 moment of silent whatever?</p> <p>6 A. Right.</p> <p>7 Q. The policy itself, though, provides that if</p> <p>8 a member chooses not to exercise the opportunity the</p> <p>9 next member in rotation shall be given the</p> <p>10 opportunity, correct?</p> <p>11 A. That is what I understand, yes.</p> <p>12 Q. So, unless all ten members decline the</p> <p>13 opportunity there will be a prayer or a moment of</p> <p>14 silence in accord with the freedom of conscience of</p> <p>15 the individual adult Board members, is that right?</p> <p>16 A. That is the way it's written.</p> <p>17 Q. In practice, since you offered the prayer</p> <p>18 at the August 24th meeting, since that time has</p> <p>19 there been any meeting at which there has, a Board</p> <p>20 member has not taken up the opportunity to solemnize</p> <p>21 the proceedings?</p> <p>22 A. I believe that to be true. Some of them</p> <p>23 have not chosen to, have chosen not to speak or not</p> <p>24 to pray or whatever.</p>

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1 versus the regular district meeting in which case we
 2 started right at 7:30 and gave it at that time.
 3 Q. Fair enough. So what you are referring to
 4 in Hattier 18, the September 28 minutes is that on
 5 page two of the minutes after the presentation there
 6 is a statement president Walls stated it's been the
 7 history and custom of the Indian River School
 8 District Board of Education to open its meetings
 9 with a prayer. He noted that the prayer is
 10 voluntary and among the members of the Board. He
 11 then asked Dr. Hattier to give an invocation?
 12 A. Yes.
 13 Q. And this the second straight meeting at
 14 which you gave an invocation?
 15 A. You know, I don't remember giving the
 16 second one, but if it says I did, I must have.
 17 Q. You must have known in advance?
 18 A. I must have known in advance. I don't
 19 remember the second one at all, but I must have.
 20 Q. Do you remember what prayer you gave?
 21 A. No, I do not. Knowing my past practice it
 22 would have been another historical one.
 23 Q. This history and custom of the Indian River
 24 School District Board of Education to open its

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1 meetings with a prayer, is that a custom and
 2 practice of opening its public meetings with a
 3 prayer, its special meetings with a prayer, its
 4 public sessions, its closed session, is there any
 5 consistent practice?
 6 A. I'm going to belief that the consistent
 7 practice was the public sessions. That's the way
 8 it's been ever since I have been on the Board and
 9 I'm pretty sure that's the way it was in the past.
 10 Q. Is it correct that the Board does not open
 11 its executive sessions with a prayer?
 12 A. No. We've already opened at that particular
 13 point, it's merely a continuation.
 14 Q. Well, in this particular Board meeting you
 15 had already met in executives session for 45
 16 minutes?
 17 A. To my knowledge the time being on the Board
 18 we've never opened it early with prayer, we've
 19 always opened it around either before or after the
 20 presentation of colors. That's just been part of
 21 the general opening up of the way the Board runs.
 22 Q. I take it then that on September 28th at
 23 least you didn't feel the need to solemnize the
 24 proceeding until 7:30?

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1 A. The executive sessions or anything that we
 2 do beforehand from what I can recall has never been
 3 treated in that fashion. I believe that we viewed
 4 it for the School Board meeting itself.
 5 Q. Is there any difference in terms of the
 6 importance of taking your duties seriously --
 7 A. In point of no, I agree.
 8 Q. Discharging them to the best of your
 9 ability?
 10 A. Correct.
 11 Q. Is it just a historical accident that you
 12 opened the public meetings with a prayer but don't
 13 open the closed meetings with a prayer?
 14 A. As I said --
 15 MR. GOSSELIN: Objection.
 16 A. My apologies. As I stated, it has been the
 17 history and practice of the district for at least as
 18 long as I can remember that it's around the time of
 19 the presentation of the colors. I believe at this
 20 point we have moved it before the colors. There are
 21 times when we did it after the colors.
 22 Q. In that very lengthy meeting on August 23rd
 23 do you recall whether the closed session opened with
 24 a prayer?

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1 A. No, it would not have.
 2 Q. Do you recall whether the meeting itself
 3 opened with a prayer?
 4 A. On the very lengthy one you mean the August
 5 23rd meeting --
 6 Q. The August 23rd meeting --
 7 A. No, I don't believe it would have opened
 8 with a prayer.
 9 Q. Is that because that was a special meeting?
 10 A. I believe so, yes sir.
 11 Q. There is no reason to distinguish between
 12 the importance of Board members' performance of
 13 their duties on August 23 and say August 24, is
 14 there?
 15 A. No, in point of fact no, I agree with that.
 16 But that has not been the history or the practice of
 17 the district for again as many years as I can
 18 recall.
 19 Q. Well, let me ask the question bluntly, do
 20 think it's any less important to solemnize the
 21 proceedings, it was any less important to solemnize
 22 the proceeding on August 23rd than it was on August
 23 24th? It was equally important on both dates,
 24 wasn't it?

<p style="text-align: right;">237</p> <p>1 right?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Let's go back to Hattier Exhibit 19. Oh,</p> <p>4 by the way at the September 28th Board minutes, this</p> <p>5 is Hattier 18, there is still no public discussion</p> <p>6 of the Board Prayer Policy, is there?</p> <p>7 A. You said the 28th, correct?</p> <p>8 Q. Yeah, Hattier Exhibit 18?</p> <p>9 A. No, it looks like the only thing we did at</p> <p>10 that time period was the policy committee the</p> <p>11 committee first and second readings. Actually all</p> <p>12 first readings.</p> <p>13 Q. And there were a couple of executive</p> <p>14 sessions where again the rubric of pending and</p> <p>15 potential litigation is --</p> <p>16 A. Correct.</p> <p>17 Q. Is it your belief that you may have</p> <p>18 discussed the School Board prayer and other prayer</p> <p>19 policies during those executive sessions?</p> <p>20 A. Probably.</p> <p>21 Q. Now, in the October 19 minutes, if you will</p> <p>22 look at page five, you will see that under policy</p> <p>23 committee --</p> <p>24 A. Uh-hum.</p>	<p style="text-align: right;">239</p> <p>1 that's being adopted?</p> <p>2 A. Well, the idea is that you read it at the</p> <p>3 meeting on a first reading and then if the public</p> <p>4 has a comment, they would contact the schools or I</p> <p>5 don't think they speak up at the meetings</p> <p>6 themselves, but the idea is that if you have an</p> <p>7 objection to it that you would contact the</p> <p>8 administration and they would make whatever</p> <p>9 appropriate changes would need to be made. That's</p> <p>10 the way I understand it.</p> <p>11 Q. Yes, sir, my question was whether the Board</p> <p>12 typically at some point prior to the adoption of a</p> <p>13 policy engages in public discussion of the policy</p> <p>14 and the reasons for it?</p> <p>15 A. No, not to my knowledge.</p> <p>16 Q. Why did you vote for the Board Prayer</p> <p>17 Policy?</p> <p>18 A. I felt it was the right thing to do.</p> <p>19 Q. The Board Prayer Policy as we've</p> <p>20 established is in substance identical to the and</p> <p>21 mostly verbatim to the hanging of the proposed</p> <p>22 policy that was given to you by the Rutherford</p> <p>23 Institute back in looks like August 30th or</p> <p>24 thereabouts?</p>
<p style="text-align: right;">238</p> <p>1 Q. -- there is a second reading and</p> <p>2 recommended approval and subsequent approval of four</p> <p>3 new policies including Board prayer, religion and</p> <p>4 school prayer at commencement, graduation and</p> <p>5 baccalaureate, do you see that?</p> <p>6 A. Uh-hum.</p> <p>7 Q. And there was no public discussion of these</p> <p>8 policies at any time prior to this approval either,</p> <p>9 was there?</p> <p>10 A. Not unless Mr. Walls did it separately from</p> <p>11 what I'm aware of.</p> <p>12 Q. Separately outside of the Board meetings</p> <p>13 which these minutes record?</p> <p>14 A. In other words, at his policy committee</p> <p>15 meetings.</p> <p>16 Q. Fair enough. You are not on the policy</p> <p>17 committee?</p> <p>18 A. No, sir, I'm not.</p> <p>19 Q. At any rate the full Board never had a</p> <p>20 public discussion of the School Board Prayer Policy,</p> <p>21 is that right?</p> <p>22 A. That is correct.</p> <p>23 Q. And is that the custom and practice of the</p> <p>24 Board to have no public discussion of a policy</p>	<p style="text-align: right;">240</p> <p>1 A. Somewhere in there, yes, sir.</p> <p>2 Q. Did you ever have an opportunity to ask</p> <p>3 anyone representing the Rutherford Institute where</p> <p>4 it got the language in these policies?</p> <p>5 A. No, I did not.</p> <p>6 Q. Was there any discussion of the language in</p> <p>7 these policies at any time at the Board level?</p> <p>8 A. This would have been discussed at an</p> <p>9 executive committee meeting.</p> <p>10 Q. Executive session?</p> <p>11 A. Executive session, I'm sorry, yes, sir.</p> <p>12 Q. At any time did anyone offer any other</p> <p>13 purpose for the Board Prayer Policy other than to</p> <p>14 solemnify its proceedings?</p> <p>15 A. No they did not.</p> <p>16 Q. No Board member ever suggested that it was</p> <p>17 an appropriate policy to preserve Christian values?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Paragraph three says such opportunity, that</p> <p>20 is the opportunity to pray, have a moment of</p> <p>21 silence, such opportunity shall not be used or</p> <p>22 exploited to proselytize, advance or convert anyone</p> <p>23 or to derogate or otherwise disparage any particular</p> <p>24 faith or belief. Is it your view that that limits</p>

<p style="text-align: right;">265</p> <p>1 Q. -- in reporting that he was called Jew boy?</p> <p>2 A. Not a bit, I believe he probably was, okay.</p> <p>3 On the other hand I don't know when he was called</p> <p>4 that, I don't know what the age of the kids was</p> <p>5 involved, and you know apparently you have children,</p> <p>6 I'm going to make a guess, okay, we have four kids</p> <p>7 and some of the nastiest people on earth are</p> <p>8 children, especially to one another. And it is up</p> <p>9 to us as adults to discipline them and correct them</p> <p>10 and teach them socially appropriate behaviors.</p> <p>11 So, if some kid somewhere had a bad day and</p> <p>12 decided to call some other child a name, certainly</p> <p>13 it would not have been condoned by the school</p> <p>14 district. And I'm not doubting what the young</p> <p>15 gentleman said at all. I'm only wondering why Mrs.</p> <p>16 Dobrich did not come forward if this was an issue</p> <p>17 with her and say something to the school or the</p> <p>18 appropriate school authorities about it.</p> <p>19 Because again in my own case with what</p> <p>20 happened to me at or about the same time period, we</p> <p>21 had to deal with it immediately. It was sent home</p> <p>22 to us the guidance counselor had talked to the kids,</p> <p>23 we had to write a letter of apology regarding it and</p> <p>24 at this particular point Hannah and that young lady</p>	<p style="text-align: right;">267</p> <p>1 are you?</p> <p>2 A. I'm saying --</p> <p>3 MR. GOSSELIN: Objection. Go</p> <p>4 ahead.</p> <p>5 A. I'm saying that name calling is name</p> <p>6 calling. Whether it's slant eyes, four eyes buffalo</p> <p>7 breath, again, pick one.</p> <p>8 Q. You think they are all the same?</p> <p>9 A. I believe it's an insult.</p> <p>10 Q. But you think they are all of equal</p> <p>11 seriousness?</p> <p>12 A. I believe they are insults.</p> <p>13 Q. You are not answering my question --</p> <p>14 A. Yes, I do believe.</p> <p>15 Q. Do you believe they are of equal</p> <p>16 seriousness?</p> <p>17 MR. GOSSELIN: Objection.</p> <p>18 A. Yes, I do, they are insults, and they</p> <p>19 should be dealt with as such.</p> <p>20 Q. And you think that they, the discipline</p> <p>21 that should be metered out should be the same for</p> <p>22 someone who calls someone with braces tinsel teeth</p> <p>23 as someone who called a boy wearing a yarmulke Jew</p> <p>24 boy?</p>
<p style="text-align: right;">266</p> <p>1 do still get together as friends, and they associate</p> <p>2 with one another. That's why I say I don't doubt</p> <p>3 the young gentleman.</p> <p>4 Q. You seem to be a pragmatic person, do you</p> <p>5 really think that someone who called Alex Dobrich a</p> <p>6 Jew boy could come to the view that Alex and he</p> <p>7 could be good friends?</p> <p>8 MR. GOSSELIN: Objection.</p> <p>9 A. Yeah, absolutely. Look, my son is a bit</p> <p>10 fiery and I've heard him say things to the boy next</p> <p>11 door and I've heard the boy next door say things</p> <p>12 equally to my son and by the next morning they are</p> <p>13 trying to figure out who can get the go-kart</p> <p>14 started.</p> <p>15 Okay, first off, do you have daughters?</p> <p>16 It's a question, okay, I have found that girls in</p> <p>17 general seem to be bit more difficult in name</p> <p>18 calling than boys are. Girls, young girls at least</p> <p>19 seem to be a bit less forgiving about things than</p> <p>20 young men are. This is a general statement, but I</p> <p>21 believe in a general it's probably true.</p> <p>22 Q. You are not suggesting, are you Dr. Hattier</p> <p>23 that calling a girl fat and ugly is the equivalent</p> <p>24 of calling one of the few Jews in a school Jew boy,</p>	<p style="text-align: right;">268</p> <p>1 A. I think.</p> <p>2 MR. GOSSELIN: Objection.</p> <p>3 A. Sorry. I think they are both derogatory</p> <p>4 and I think they are both designed to hurt another</p> <p>5 individual and they are both designed to make</p> <p>6 another individual feel small, and as such neither</p> <p>7 one of them is acceptable behavior. I mean if you</p> <p>8 wish to put an emotional value of whatever type you</p> <p>9 are certainly free to do so, but to me it's an</p> <p>10 insult.</p> <p>11 And my concerned at this particular time</p> <p>12 period had been to see to it that we did have</p> <p>13 something in our policies that would address those</p> <p>14 issues, if we didn't already have them.</p> <p>15 Q. At the August 24 meeting do you recall a</p> <p>16 comment in which someone suggested that Mrs. Dobrich</p> <p>17 might disappear like Madelyn Murray-O'Hare?</p> <p>18 A. Yes.</p> <p>19 Q. How did you feel about that comment?</p> <p>20 A. As I told you earlier some things were said</p> <p>21 that should not have been said and were clearly</p> <p>22 inappropriate.</p> <p>23 Q. You understood that to be a threat to</p> <p>24 Mrs. Dobrich did you not?</p>

<p style="text-align: right;">269</p> <p>1 A. Yes, I did.</p> <p>2 Q. What was done to silence that person from</p> <p>3 making that threat in the context of that highly</p> <p>4 volatile meeting?</p> <p>5 A. Not so much.</p> <p>6 Q. How made that threat?</p> <p>7 A. I couldn't begin to tell you. We had a lot</p> <p>8 of people talking that day.</p> <p>9 Q. Has it come to pass that someone in a</p> <p>10 public comment session has been asked to sit down</p> <p>11 because what they were saying was inappropriate?</p> <p>12 A. Yes.</p> <p>13 Q. And that's happened for example when</p> <p>14 someone begins to discuss an individual school</p> <p>15 district employee?</p> <p>16 A. Yes.</p> <p>17 Q. Because the Board has a policy to make sure</p> <p>18 that concerns about individual school district</p> <p>19 employees should be dealt with privately, not in</p> <p>20 public?</p> <p>21 A. Yes.</p> <p>22 Q. But it's okay in your view, and in the</p> <p>23 views of the Board to let members of the community</p> <p>24 threaten Mrs. Dobrich with disappearance like a</p>	<p style="text-align: right;">271</p> <p>1 should take his yarmulke off before he spoke before</p> <p>2 that Board meeting?</p> <p>3 A. No.</p> <p>4 Q. Would you like me to show you the tape?</p> <p>5 A. I believe you.</p> <p>6 MR. GOSSELIN: Objection. If you</p> <p>7 have got a tape you can look at it.</p> <p>8 Q. Did you hear the comments that if Mrs.</p> <p>9 Dobrich would merely raise her child right in the</p> <p>10 Christian faith she wouldn't have any problems with</p> <p>11 the district's practices?</p> <p>12 A. Comments like that might have been made.</p> <p>13 Q. Did you think those were appropriate?</p> <p>14 A. You know what --</p> <p>15 MR. GOSSELIN: Objection.</p> <p>16 You can answer.</p> <p>17 A. Okay. I'm not going to tell you how to</p> <p>18 raise your child. I'm not going to tell you how to</p> <p>19 behave in public. You know if you want to make a</p> <p>20 fool out of yourself on the stand and go for it</p> <p>21 that's your entire privilege.</p> <p>22 Okay, and something like that as a</p> <p>23 practicing chiropractor I'm used to people making</p> <p>24 fun of what I do on a fairly regular basis. And I'm</p>
<p style="text-align: right;">270</p> <p>1 renowned atheist who was later found dismembered?</p> <p>2 MR. GOSSELIN: Objection.</p> <p>3 A. All right, I think the best way to express</p> <p>4 my feelings at that time would be stunned that</p> <p>5 somebody would be stupid enough to make comments</p> <p>6 like that in an open meeting.</p> <p>7 Q. Dr. Hattier, this person spoke for lost two</p> <p>8 minutes did someone think about saying to Mr. Walls</p> <p>9 tell that person to sit down?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. In retrospect do you think that you should</p> <p>12 have done that?</p> <p>13 A. Absolutely.</p> <p>14 Q. And every other Board member should have</p> <p>15 done it, don't you think?</p> <p>16 A. I would think so.</p> <p>17 Q. Was that the only threatening comment made</p> <p>18 about Mrs. Dobrich at the August 24 meeting?</p> <p>19 MR. GOSSELIN: Go ahead.</p> <p>20 A. That's the one that I remember the most. I</p> <p>21 don't remember all of the specifics. Like you</p> <p>22 noted, there were a lot of people who talked that</p> <p>23 particular day.</p> <p>24 Q. Do you remember comments that Alex Dobrich</p>	<p style="text-align: right;">272</p> <p>1 also sued to considering what the sources are and I</p> <p>2 end up flushing most of it, okay. So, if somebody</p> <p>3 wants to make a fool out of themselves and make</p> <p>4 comments like that in an open meeting to my mind the</p> <p>5 thing speaks for itself.</p> <p>6 Q. Let me ask you this question. Did you view</p> <p>7 the atmosphere that existed at that meeting as</p> <p>8 highly intimidating to Mrs. Dobrich and her family?</p> <p>9 A. It could have been seen that way --</p> <p>10 MR. GOSSELIN: Objection.</p> <p>11 Q. By Mrs. Dobrich?</p> <p>12 A. It could have seen that way.</p> <p>13 Q. Don't you think that the comment, some of</p> <p>14 the comments that I just reviewed with you were</p> <p>15 intended to intimidate Mrs. Dobrich and her family?</p> <p>16 MR. GOSSELIN: Objection. Let's</p> <p>17 take a break everybody seems to be getting</p> <p>18 a little excited right here. Let's take a</p> <p>19 break, five minutes.</p> <p>20 MR. ALLINGHAM: I'd like an answer</p> <p>21 to my question.</p> <p>22 Q. Don't you think those comments were</p> <p>23 intended to intimidate Mrs. Dobrich and her family?</p> <p>24 A. I can't --</p>

<p style="text-align: right;">289</p> <p>1 the next morning to do things.</p> <p>2 You know in my business because I used my</p> <p>3 hands is an issue, and that's something that I'm</p> <p>4 hoping we can resolve in a pleasant way.</p> <p>5 Q. So, there has been an increase in the</p> <p>6 number of awards given at the district level. In</p> <p>7 the other areas that I talked about, students</p> <p>8 expressing their delight or concern on particular</p> <p>9 aspects of school life, presentation of colors,</p> <p>10 performances of students, is it correct that that</p> <p>11 goes back a long time?</p> <p>12 A. As far as I know that goes back a long</p> <p>13 time.</p> <p>14 Q. So, is it fair for me to infer that the</p> <p>15 long time practice of opening School Board meetings</p> <p>16 with prayers coincides with the attendance of</p> <p>17 students at those meetings?</p> <p>18 A. Probably.</p> <p>19 Q. Have you ever heard any Board member</p> <p>20 express opposition to student involvement in Board</p> <p>21 meetings or support for limiting student involvement</p> <p>22 at Board meetings?</p> <p>23 A. Recently.</p> <p>24 Q. Who is that?</p>	<p style="text-align: right;">291</p> <p>1 A. Most I would say open with a prayer of some</p> <p>2 type, or a statement of some type because I have</p> <p>3 also used nonreligious individuals. I've made</p> <p>4 statements from Albert Einstein to open mine. I</p> <p>5 recall at least two occasions of moments of silence.</p> <p>6 And I have not made every Board meeting, I make</p> <p>7 about 11, between ten and 11 per year, so I'm not at</p> <p>8 all have them.</p> <p>9 Q. The Albert Einstein statement, have you the</p> <p>10 text of the statements or prayers that you've</p> <p>11 offered?</p> <p>12 A. I might be able to find that one because it</p> <p>13 was fairly recent.</p> <p>14 Q. Why did you pick the Albert Einstein</p> <p>15 statement?</p> <p>16 A. Because Albert Einstein in that particular</p> <p>17 one was referring to the existence of God and how</p> <p>18 that that was something that should play a role in</p> <p>19 folks' lives. And that was a good way to look</p> <p>20 beyond yourself. I can't remember the exact quote.</p> <p>21 I'm not very good at exact quotes.</p> <p>22 Q. And you obviously thought that was adequate</p> <p>23 to solemnize the proceeding?</p> <p>24 A. Absolutely.</p>
<p style="text-align: right;">290</p> <p>1 A. A lot of us simply because if there was a</p> <p>2 way we could eliminate that first half an hour, 45</p> <p>3 minutes it might get us home by 11 o'clock or 11:30.</p> <p>4 Q. Oh, that's the issue --</p> <p>5 A. Yes and that there might be a more</p> <p>6 appropriate way to handle that particular item.</p> <p>7 Others than that I'm not aware of any.</p> <p>8 Q. On the issue of the prayers that would be</p> <p>9 offered you expect to be on a rotational basis at</p> <p>10 least offered the opportunity to give prayers --</p> <p>11 A. Yes, sir.</p> <p>12 Q. -- before the Board meetings?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Is it your intent to continue to use</p> <p>15 historical prayers of some kind?</p> <p>16 A. Yes, it is.</p> <p>17 Q. The policy, the School Board Prayer Policy</p> <p>18 was adopted in October of 2004, since that time has</p> <p>19 a Board member offered a prayer or moment of silence</p> <p>20 at the beginning of every meeting?</p> <p>21 A. I believe so.</p> <p>22 Q. And of those meetings can you give me a</p> <p>23 ballpark so as to how many have opened with a prayer</p> <p>24 and how many have opened with a moment of silence?</p>	<p style="text-align: right;">292</p> <p>1 Q. You told me earlier there have been</p> <p>2 instances in which a School Board member has</p> <p>3 declined to offer a prayer or lead a moment of</p> <p>4 silence?</p> <p>5 A. Yes.</p> <p>6 Q. Can you tell me which Board members did</p> <p>7 that?</p> <p>8 A. I want to say that it was probably</p> <p>9 Dr. Isaacs but I cannot say that with a sense of</p> <p>10 assurity.</p> <p>11 Q. Is there only one that you recall?</p> <p>12 A. That's it. My believe is that Mr. Bireley</p> <p>13 will set these things up in advance to give us all a</p> <p>14 chance to be prepared, and especially they know if I</p> <p>15 do it that they know that I'm going to need a good</p> <p>16 couple of days.</p> <p>17 Q. So, if Mr. Bireley sets these things up in</p> <p>18 advance how did you know that Dr. Isaacs or whoever</p> <p>19 it was had declined the opportunity?</p> <p>20 A. Because there was one Board meeting where</p> <p>21 somebody did and that was early on when we were</p> <p>22 still working non the process itself. That would</p> <p>23 have been maybe early 2005, I don't remember. It</p> <p>24 was something in that time frame.</p>

<p>301</p> <p>1 which the Madelyn Murray-O'Hare comment was made?</p> <p>2 A. Not that I'm aware of. I can't tell you</p> <p>3 that.</p> <p>4 Q. Let me ask you personally, Dr. Hattier. Do</p> <p>5 you have same sympathy with the Doe's desire to</p> <p>6 remain anonymous given what happened at the August</p> <p>7 24th meeting?</p> <p>8 MR. GOSSELIN: Objection.</p> <p>9 Go ahead.</p> <p>10 A. You know, I have a sympathy for them but</p> <p>11 let me state that I actually have a high degree of</p> <p>12 respect for the Dobrich family, all right, I really</p> <p>13 do. I have a high respect for them because they</p> <p>14 believed in something and they were willing to step</p> <p>15 forward, just as I am now to defend the beliefs that</p> <p>16 I have him. All right, and I think that if somebody</p> <p>17 wishes to hide behind anonymity on an issue, you</p> <p>18 know they are doing it out of fear or whatever, but</p> <p>19 if they are right they are right.</p> <p>20 And my understanding is that the thing that</p> <p>21 the Doe family was originally complaining about,</p> <p>22 which had something to do with the Bible Club, which</p> <p>23 I was not aware of at the time period, okay there</p> <p>24 were right, we fixed it. We corrected it. Okay,</p>	<p>303</p> <p>1 Q. This can go quickly. I have some</p> <p>2 statements that you were quoted as having been to</p> <p>3 the media. I really don't want to, I don't think</p> <p>4 debate these statements just want to confirm that</p> <p>5 you were quoted accurately?</p> <p>6 A. Okay.</p> <p>7 Q. I may have a question or two but I think</p> <p>8 it's going to be --</p> <p>9 MR. ALLINGHAM: This is Hattier</p> <p>10 24. The Bates number is P104 and 105.</p> <p>11 (WHEREUPON Hattier Exhibit 24 was</p> <p>12 marked for identification)</p> <p>13 Q. There is taken from Sussex County Online.</p> <p>14 You are reported in the one, two, three four, fifth</p> <p>15 paragraph as having been, as having said,</p> <p>16 "Dr. Donald Hattier who opened last week's meeting</p> <p>17 with a prayer penned by George Washington admitted</p> <p>18 the School Board's current stance on prayer wouldn't</p> <p>19 hold up in court?"</p> <p>20 A. Incomplete quote.</p> <p>21 Q. Can you complete it for me?</p> <p>22 A. Yes. Graduation prayer. Graduation prayer</p> <p>23 and prayer at school luncheons, other things. If</p> <p>24 you compare what we were doing with the DOJ cite it</p>
<p>302</p> <p>1 and other than I personally don't see what the issue</p> <p>2 is.</p> <p>3 Q. You were personally present and observed</p> <p>4 the treatment of Alex and Samantha Dobrich at the</p> <p>5 August 24th Board meeting, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do think that the treatment of those two</p> <p>8 children at that meeting, by community members,</p> <p>9 might legitimately cause parents to be concerned</p> <p>10 about the treatment that their children would get if</p> <p>11 they relinquished anonymity?</p> <p>12 A. Yes.</p> <p>13 Q. I asked you earlier whether you are that</p> <p>14 any of your children had tried to confirm who the</p> <p>15 Does were and you said you were not aware of that?</p> <p>16 A. No, I would prefer that my children not</p> <p>17 have a clue as to who they.</p> <p>18 Q. Am I also correct that you are not aware</p> <p>19 that your wife or any member of your family has</p> <p>20 taken any action to try to confirm who the Does are.</p> <p>21 A. I would hope not.</p> <p>22 Q. This is closing the loop for the record, I</p> <p>23 would hope not means no you not area?</p> <p>24 A. Take that as a no, yes, well, whatever, no.</p>	<p>304</p> <p>1 would not hold up. Incomplete quote.</p> <p>2 Q. Okay, so you did say this but you weren't</p> <p>3 referring to the School Board prayer?</p> <p>4 A. No, I was not, I was referring to the other</p> <p>5 issues.</p> <p>6 Q. And let me just ask you the question, and</p> <p>7 are the current policies which have been adopted</p> <p>8 since that time in your have view in compliance with</p> <p>9 the Constitution?</p> <p>10 A. Lordy, I hope so.</p> <p>11 MR. ALLINGHAM: This is Hattier</p> <p>12 25. And I will tell you in advance, Dr.</p> <p>13 Hattier I have only the second page of this</p> <p>14 article from The Wave. I don't know why.</p> <p>15 It bears Bates number P122. I will see if I</p> <p>16 can find the first page.</p> <p>17 (WHEREUPON, Hattier Exhibit 25 was</p> <p>18 marked for identification)</p> <p>19 A. Yes, final paragraph.</p> <p>20 Q. Is your comment accurately reported there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay?</p> <p>23 A. And again though that's based on my</p> <p>24 findings afterwards. Okay, in other words, you look</p>

<p style="text-align: right;">321</p> <p>1 woman had an edge in her voice the entire time she</p> <p>2 was giving the interview and I was very concerned</p> <p>3 that she was not going to be quoting me correctly</p> <p>4 and as it turns out I don't believe she did.</p> <p>5 Q. Okay, so you don't think that volunteer</p> <p>6 work is your word?</p> <p>7 A. No.</p> <p>8 Q. Okay, that's fine. I just wanted to know.</p> <p>9 You are reported two paragraphs below that as saying</p> <p>10 that, "prayer works, look at the test scores in</p> <p>11 Indian River, look at the number of superior schools</p> <p>12 we have and the number of blue ribbon schools. We</p> <p>13 have done good and part of that is because of</p> <p>14 prayer."</p> <p>15 A. I believe that.</p> <p>16 Q. Did you say that to her?</p> <p>17 A. Something to this effect, yes, I did.</p> <p>18 Q. Part of that is because of prayer is a</p> <p>19 generic statement. Do you believe that the</p> <p>20 district's superior performance is as you've layed</p> <p>21 them out here are due in part to the opening of</p> <p>22 School Board meetings with a prayer?</p> <p>23 A. I think that's probably part of it, yes.</p> <p>24 Q. And explain to me how the opening of School</p>	<p style="text-align: right;">323</p> <p>1 Q. And how will the students who are not</p> <p>2 present find out the prayer that you've offered?</p> <p>3 A. Okay now you're asking some interesting</p> <p>4 questions about theology, but if a prayer is offered</p> <p>5 does the other person need to know that you are</p> <p>6 praying for them, or is it simply the fact that, you</p> <p>7 know, the Lord would understand.</p> <p>8 Q. I apologize. I misunderstood. I thought</p> <p>9 that prayers were offered in order to invoke the</p> <p>10 help of a higher power for the Board members to do</p> <p>11 their best in discharging their responsibilities --</p> <p>12 A. Yes.</p> <p>13 Q. -- as Board members?</p> <p>14 A. They are.</p> <p>15 Q. I did not understand that you offer prayers</p> <p>16 that a higher power assist the students of the</p> <p>17 district in performing?</p> <p>18 A. We have asked in terms of our prayers to</p> <p>19 solemnify that we ask again, if you read what I</p> <p>20 wrote above it, maybe it's not this one, yeah, it is</p> <p>21 in this one, you know, praying is about giving</p> <p>22 yourself up saying I don't know everything give me</p> <p>23 help. It's about going above and beyond mere ego</p> <p>24 and about being willing to humble yourself.</p>
<p style="text-align: right;">322</p> <p>1 Board meetings with a prayer contributes to improved</p> <p>2 academic performance of the students?</p> <p>3 A. In the same sense the George Washington and</p> <p>4 a lot of our founding fathers made the statement</p> <p>5 that you cannot have a good nation without studying</p> <p>6 religion and morality and without putting the glory</p> <p>7 of God ahead of what you do. It's in the same</p> <p>8 thing.</p> <p>9 I mean I don't have my direct quotes with</p> <p>10 me as I stated I'm not very good with direct quotes</p> <p>11 without my notepad handy, but if you look at what</p> <p>12 the founding fathers stated and they way they</p> <p>13 approached things it was always with the idea in</p> <p>14 mind that they would give the credit and the glory</p> <p>15 to God and that good things were found that way.</p> <p>16 Q. All right, so when you offer a payer at the</p> <p>17 beginning of the School Board meeting you believe</p> <p>18 that it will have an impact on the students of the</p> <p>19 district?</p> <p>20 A. I believe so.</p> <p>21 Q. And is that an impact that is limited to</p> <p>22 the students who are in attendance or does it apply</p> <p>23 across the board in the district?</p> <p>24 A. I hope it applies across the board.</p>	<p style="text-align: right;">324</p> <p>1 And in that sense at a lot of our prayers</p> <p>2 we will ask for the proper guidance for our</p> <p>3 custodial staff, or our teachers to do the right</p> <p>4 things as well. I mean it's about solemnifying the</p> <p>5 Board meeting and maybe in that sense we step over</p> <p>6 the line and pray for too many people, but we</p> <p>7 certainly want our students to succeed well and at</p> <p>8 least speaking for myself I do believe that God will</p> <p>9 intervene in those things. Without being overly</p> <p>10 simplistic about it.</p> <p>11 Q. On the next page of the article, you are</p> <p>12 quoted as saying and this is near the bottom of the</p> <p>13 left hand most column. The reporter purports to</p> <p>14 report the prayer that you gave at the August 24th</p> <p>15 meeting which is the prayer from George Washington,</p> <p>16 do you see that there?</p> <p>17 A. uh-hum.</p> <p>18 Q. And then quotes you as having said, "Our</p> <p>19 founding fathers said that if this nation doesn't</p> <p>20 have God it doesn't have squat?"</p> <p>21 A. Yes, and actually that is a verbatim quote</p> <p>22 absolutely. And if need be I can, they would not</p> <p>23 have used the word squat, let's face it. They would</p> <p>24 have phrased it far more 17th century or 18th</p>

EXHIBIT 9

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually and 5 As parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. Civil Action 11 No. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF REGINALD HELMS, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosier Street, Selbyville, Delaware, 18 beginning at 3:32 p.m. on October 11, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 22 APPEARANCES: 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p>	<p>3 1 MS. DUPHILY: This is the 2 videotape deposition of Reggie Helms. This 3 deposition is being taken on behalf of the 4 Plaintiff in the matter of Dobrich, et al. 5 versus Indian River School Board, et al, 6 case number 15-120. The deposition is 7 being held at 31 Hosier Boulevard, 8 Selbyville, Delaware. We are going on the 9 record on October 11, 2006 at approximately 10 3:32 p.m. 11 The court reporter is David Sroka 12 with Wilcox & Fetzer, Wilmington, Delaware. 13 my name is Lindsay duPhily and I am the 14 videotape specialist with Discovery Video 15 Services. 16 Counsel will now introduce 17 themselves and then the court reporter will 18 swear in the witness. 19 MR. ALLINGHAM: I'm Tom Allingham 20 for the Plaintiffs and with me are Richard 21 Horvath and Brian Lenhard. 22 MR. GOSSELIN: Jason Gosselin for 23 Indian River School District and the Indian 24 River School Board and the individual board</p>
<p>2 1 2 JASON P. GOSSELIN, ESQ. 3 JARROD D. SHAW, ESQ. 4 Drinker Biddle & Reath LLP 5 One Logan Square 6 Philadelphia, Pennsylvania 19103-6996 7 For the Defendants 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>4 1 member in attendance. 2 REGINALD HELMS, 3 The Witness herein, called for examination by 4 the Plaintiff, having been duly sworn to tell the 5 truth, the whole truth, and nothing but the truth, 6 was examined and testified as follows: 7 EXAMINATION BY MR. ALLINGHAM: 8 Q. I've put before you the top document is 9 Plaintiff's Exhibit 30. Would you turn to the last 10 page of that exhibit, please? 11 In the second column from the right -- I 12 should give you some background. This is an article 13 from Delaware Beach Life, have you ever read it 14 before? 15 A. No. 16 Q. There is a picture of you on the front 17 page, is that correct? 18 A. That's me. 19 Q. Not the best picture of all time? 20 A. Well -- 21 Q. In the second column from the right there 22 is a quotation from the Reverend Jerry Fike, do you 23 know who Mr. Fike is? 24 A. Yes.</p>

<p style="text-align: right;">13</p> <p>1 religion, and that type of thing. A lot of people</p> <p>2 were talking about that issue at that time.</p> <p>3 Q. And did you understand that what people</p> <p>4 were all -- what people considered important was</p> <p>5 whether School Board members could pray before the</p> <p>6 School Board meeting?</p> <p>7 A. I don't recall thinking of it specifically</p> <p>8 that way about praying before a Board meeting, no.</p> <p>9 Q. Did it seem to you that the public comments</p> <p>10 at the Board meeting had as much to do with prayer</p> <p>11 in the schools as they did prayer before a School</p> <p>12 Board meeting?</p> <p>13 A. Yes.</p> <p>14 Q. Did you think that represented a</p> <p>15 misunderstanding on the part of the public as to</p> <p>16 what was before the Board at that meeting?</p> <p>17 A. Yes.</p> <p>18 Q. And what efforts were made to correct that</p> <p>19 misunderstanding?</p> <p>20 A. Well, on my part I didn't know it was a</p> <p>21 misunderstanding until that night. So, I don't know</p> <p>22 of anything that was done to prevent it because</p> <p>23 quite frankly I didn't know it was a</p> <p>24 misunderstanding until people started getting up at</p>	<p style="text-align: right;">15</p> <p>1 prayer at school related functions outside of the</p> <p>2 school day, is that a fair description?</p> <p>3 A. Well, in my words, in my thoughts I would</p> <p>4 say it was prayer in general that had anything to do</p> <p>5 with banquets, graduation, that type of thing, and</p> <p>6 some of that could have been part of the school day</p> <p>7 and some of it might not have been. But I didn't</p> <p>8 think it was an issue of whether the students could</p> <p>9 open the day with prayer or that sort of thing.</p> <p>10 I mean that issue in my mind had been</p> <p>11 settled by the courts and I didn't think we were</p> <p>12 there to discuss that. So, when people started</p> <p>13 coming up to the podium and talking about that I</p> <p>14 thought well, they obviously misunderstood what's</p> <p>15 going on.</p> <p>16 Q. Where do you think that misunderstanding</p> <p>17 came from?</p> <p>18 A. I have no idea.</p> <p>19 Q. What efforts did the Board make to correct</p> <p>20 that misunderstanding?</p> <p>21 A. I don't recall anything specifically being</p> <p>22 done as far as the Board is concerned. I'm not sure</p> <p>23 whether Mrs. Hobbs took any action or not. I think</p> <p>24 there was some discussion, although I can't recall</p>
<p style="text-align: right;">14</p> <p>1 the podium talking.</p> <p>2 Q. That is to say until people started talking</p> <p>3 you thought people understood that this was a School</p> <p>4 Board prayer issue?</p> <p>5 A. No. I didn't think it was a School Board</p> <p>6 prayer issue, I thought it was more along the lines</p> <p>7 of prayer before graduation, and that sort of thing.</p> <p>8 More so than the Board prayer issue.</p> <p>9 Q. Have you ever had occasion to -- strike</p> <p>10 that.</p> <p>11 How did you form the view that you thought</p> <p>12 what was being talked about at the August 24th</p> <p>13 meeting was graduation prayer rather than School</p> <p>14 Board prayer?</p> <p>15 A. Well, as I recall it was a matter of</p> <p>16 prayer. I didn't in my own mind I didn't separate</p> <p>17 it between prayer before graduation or that sort of</p> <p>18 thing as specifically to the School Board meeting.</p> <p>19 I thought it was prayer in general, but not prayer</p> <p>20 in school, but prayer before any graduation or that</p> <p>21 sort of thing. I didn't, I didn't separate the two</p> <p>22 in my mind.</p> <p>23 Q. So, as you walked into the August 24th</p> <p>24 meeting you thought what was being discussed was</p>	<p style="text-align: right;">16</p> <p>1 any specifics about an executive session where we</p> <p>2 thought some people had misunderstood.</p> <p>3 I don't know what specific actions were</p> <p>4 taken.</p> <p>5 Q. Did you think given the clear</p> <p>6 misunderstanding that it was important for the Board</p> <p>7 to correct that misunderstanding?</p> <p>8 A. I don't recall -- I don't recall myself</p> <p>9 making a statement like we must clear up this</p> <p>10 misunderstanding. I do know it was brought up, but</p> <p>11 I don't recall saying anything specifically where we</p> <p>12 need to make sure we clear up this misunderstanding.</p> <p>13 Q. Now, when you say I know it was brought up,</p> <p>14 does that mean the notion that people had</p> <p>15 misunderstood what was before the Board was brought</p> <p>16 up?</p> <p>17 A. In the executive session I think there was</p> <p>18 some mention of there is some people here tonight</p> <p>19 that I think misunderstood what was going on. I</p> <p>20 don't recall who said that, but I do recall it being</p> <p>21 said.</p> <p>22 Q. Were you present throughout the public</p> <p>23 comment session at the August 24 meeting?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">45</p> <p>1 I have reviewed the ones that are</p> <p>2 pertaining to the Board of Education, and my</p> <p>3 responsibilities. Can I quote them to you verbatim,</p> <p>4 no, but I have reviewed them. But there are some</p> <p>5 policies in there that I have not reviewed.</p> <p>6 Q. How were you able to identify the ones that</p> <p>7 relate to your responsibilities if you haven't</p> <p>8 reviewed them all?</p> <p>9 A. There is a tab in the policy manual that we</p> <p>10 receive that has the different categories and one of</p> <p>11 those is of the Board of Education.</p> <p>12 Q. And you have reviewed all the policies</p> <p>13 under that tab?</p> <p>14 A. Yes. And since I have been on the Board I</p> <p>15 have looked at those, although there are some that I</p> <p>16 probably can't recall, but I know where I can find</p> <p>17 them if there is a question.</p> <p>18 Q. All of the policies that are in the policy</p> <p>19 manual are policies that were adopted by the Board,</p> <p>20 is that correct?</p> <p>21 A. At some point in time, yes.</p> <p>22 Q. And the Board is charged with enforcing and</p> <p>23 administering all of those policies, is that</p> <p>24 correct?</p>	<p style="text-align: right;">47</p> <p>1 asking.</p> <p>2 MS. DUPHILY: We are going off the</p> <p>3 record at approximately 4:29 p.m..</p> <p>4 (WHEREUPON a brief recess was</p> <p>5 taken)</p> <p>6 MS. DUPHILY: Back on the record</p> <p>7 at approximately 4:36 p.m..</p> <p>8 Q. I'm going to try to establish some</p> <p>9 chronological guideposts for purposes of our</p> <p>10 discussion. The graduation in 2004 that</p> <p>11 precipitated, it was the first event precipitating</p> <p>12 this lawsuit, took place in early June, do you</p> <p>13 recall that?</p> <p>14 A. I recall when it happened, but I wasn't</p> <p>15 there.</p> <p>16 Q. Am I correct in characterizing that as the</p> <p>17 first event that precipitated the Board's</p> <p>18 consideration of -- that culminated in the Board's</p> <p>19 consideration and adoption of School Board Prayer</p> <p>20 Policy?</p> <p>21 A. I would say so, yes.</p> <p>22 Q. The first Board meeting at which, and we</p> <p>23 have already marked these as exhibits, so I'm going</p> <p>24 to get out the documents. The first Board meeting</p>
<p style="text-align: right;">46</p> <p>1 A. I'm not -- the Board is responsible to make</p> <p>2 sure that those policies are enforced. I don't know</p> <p>3 if the Board enforces them themselves, but the buck</p> <p>4 stops here. Ultimately the Board is responsible as</p> <p>5 being the Board of Education.</p> <p>6 Q. Fair enough. It's true that you may</p> <p>7 delegate enforcement or administration in some</p> <p>8 areas, but the ultimate responsibility for</p> <p>9 enforcement and administration of the Board policies</p> <p>10 is with the Board?</p> <p>11 MR. GOSSELIN: Objection.</p> <p>12 Q. Correct?</p> <p>13 A. We do not enforce the policies. We are</p> <p>14 responsible to make sure that the policies are</p> <p>15 adhered to. In other words, the superintendent is</p> <p>16 responsible for the day-to-day operation of the</p> <p>17 district. However, when there is a question then</p> <p>18 that is brought to the Board, and then the Board has</p> <p>19 to make a decision on whether the policy was</p> <p>20 followed, whether it was not, but as far as</p> <p>21 enforcing the day-to-day operations and the policies</p> <p>22 I don't think that's our responsibility.</p> <p>23 We are responsible for the policies but not</p> <p>24 to enforce them ourselves, if that's what you're</p>	<p style="text-align: right;">48</p> <p>1 at which that issue was considered was June 15,</p> <p>2 2004, Mr. Helms, so let me show you the minutes from</p> <p>3 that meeting.</p> <p>4 A. Okay.</p> <p>5 Q. This set of minutes and I believe every set</p> <p>6 of minutes that I show you has either the signature</p> <p>7 or signature stamp from Mrs. Hobbs, does that</p> <p>8 indicate that these are the final minutes?</p> <p>9 A. I would assume so, yes.</p> <p>10 Q. Approved by the Board?</p> <p>11 A. Yes.</p> <p>12 Q. As a preliminary matter you're recorded as</p> <p>13 being present at this meeting, do you have any</p> <p>14 reason to doubt that you were there?</p> <p>15 A. No.</p> <p>16 Q. There is no discussion in the minutes of</p> <p>17 any member of the Board offering a prayer after the</p> <p>18 meeting was called to order, do you recall whether a</p> <p>19 prayer was offered?</p> <p>20 A. I don't recall specifically, no, but I</p> <p>21 would sit here and say I'm sure there was, but I</p> <p>22 don't recall any specific.</p> <p>23 Q. I wasn't asking you about the specifics of</p> <p>24 the prayer, I was just asking you do you recall</p>

<p style="text-align: right;">73</p> <p>1 A. Yes. There was more along the lines that</p> <p>2 we agree that we think you should continue what you</p> <p>3 are doing. It wasn't really stick to your guns that</p> <p>4 sort of thing, it was encouraging, yes.</p> <p>5 Q. How many constituents do you suppose there</p> <p>6 are in the Indian River School District?</p> <p>7 A. I don't know.</p> <p>8 Q. You have on the order of 8,000 students,</p> <p>9 right?</p> <p>10 A. Yes, 7,000 something, yeah.</p> <p>11 Q. There must be at least two or three times</p> <p>12 that number of residents, correct?</p> <p>13 A. Yes, I would say at least two times.</p> <p>14 Q. So, you had an average of 50 calls from</p> <p>15 people who wanted -- you would have been expected to</p> <p>16 be calling you in support, among the many more</p> <p>17 constituents in your district?</p> <p>18 A. Correct.</p> <p>19 Q. You weren't trying to suggest to the Board</p> <p>20 members that all of your constituents supported, did</p> <p>21 not want the Board to change its practice of opening</p> <p>22 meetings with a prayer, were you?</p> <p>23 A. I can't recall exact words, but probably I</p> <p>24 would have said something like the people who have</p>	<p style="text-align: right;">75</p> <p>1 that you didn't yet have?</p> <p>2 A. I wanted somebody to tell me that we were</p> <p>3 breaking the law, and we were going against -- if</p> <p>4 someone had told us that we were breaking the law,</p> <p>5 and that what we are doing was illegal, then I would</p> <p>6 have said then we need to stop it. But I needed</p> <p>7 somebody, you know, like a judge or someone to tell</p> <p>8 me, and at that point we had never been showed that.</p> <p>9 So, I don't know if it was to get a legal</p> <p>10 opinion or to get a second opinion, I can't tell you</p> <p>11 that. But I know my stance was I need somebody to</p> <p>12 tell me that what I'm doing is wrong.</p> <p>13 MR. GOSSELIN: You should call Mr.</p> <p>14 Allingham.</p> <p>15 Q. The minutes, the full meeting minutes,</p> <p>16 reflect that Mr. Griffin was in attendance?</p> <p>17 A. Okay.</p> <p>18 Q. Do you recollect that in the four hours and</p> <p>19 14 minute executive session Mr. Griffin was also in</p> <p>20 attendance?</p> <p>21 A. I don't recall that specifically, no, but</p> <p>22 if you say he was there then he was there.</p> <p>23 Q. You should never accept --</p> <p>24 A. I mean, if the minutes reflect that he was</p>
<p style="text-align: right;">74</p> <p>1 called me have suggested that we continue. No, I</p> <p>2 wouldn't have said all my constituents.</p> <p>3 Q. That wouldn't have been the truth right?</p> <p>4 A. No, I don't use words like all, never,</p> <p>5 those sort of thing, because it always comes back to</p> <p>6 haunt you.</p> <p>7 Q. And the Board members concluded that they</p> <p>8 didn't want to make a decision on that issue</p> <p>9 correct?</p> <p>10 A. I think that would be safe to say, yes.</p> <p>11 Q. Is it correct that the reason the Board did</p> <p>12 not feel that a decision could be made that evening</p> <p>13 is that the Board wanted to get an additional or a</p> <p>14 second legal opinion on the School Board prayer</p> <p>15 issue?</p> <p>16 MR. GOSSELIN: Objection.</p> <p>17 A. I don't remember, it could have been. I</p> <p>18 don't recall specifically somebody saying we want to</p> <p>19 get a second opinion. I mean I don't remember those</p> <p>20 words. I don't know why. The only thing I can tell</p> <p>21 you for sure is I didn't want to make a decision</p> <p>22 that night because I didn't feel we had enough</p> <p>23 information.</p> <p>24 Q. What information did you feel you needed</p>	<p style="text-align: right;">76</p> <p>1 there --</p> <p>2 Q. I understand. Do you recall whether it was</p> <p>3 at August 23 or another time do you recall receiving</p> <p>4 advice from Mr. Griffin on the School Board prayer</p> <p>5 issue?</p> <p>6 MR. GOSSELIN: Objection.</p> <p>7 Actually no I don't object to that, but</p> <p>8 since we are getting into this territory I</p> <p>9 am cautioning Mr. Helms give me time to</p> <p>10 object because I may be instructing you not</p> <p>11 to answer, but you can answer that</p> <p>12 question.</p> <p>13 A. Yes, Mr. Griffin gave us advice.</p> <p>14 Q. In light of the fact that Mr. Griffin is</p> <p>15 recorded as being present under other visitors and</p> <p>16 staff in attendance on the PX14 regular minutes of</p> <p>17 the August 23 meeting, and the fact that it appeared</p> <p>18 the only purpose of the executive session and the</p> <p>19 meeting was to deal with this school prayer issue,</p> <p>20 School Board prayer issue, do you believe that your</p> <p>21 advice from Mr. Griffin came during this executive</p> <p>22 session?</p> <p>23 A. Yes.</p> <p>24 Q. And you agreed, I take it, with the</p>

<p style="text-align: right;">93</p> <p>1 that was this, I asked you whether as a general</p> <p>2 proposition it was fair to say that your approach</p> <p>3 was that you would prefer to continue the Board's</p> <p>4 past practice unless someone could tell you in a</p> <p>5 reasonably definitive way that what the Board had</p> <p>6 done in the past was illegal or unconstitutional.</p> <p>7 I want to ask you how you use that approach</p> <p>8 when what is being considered is a new action or a</p> <p>9 new policy. Do you require that someone demonstrate</p> <p>10 to you that the new action or new policy proposed is</p> <p>11 definitively constitutional or legal?</p> <p>12 Do you understand my question?</p> <p>13 A. I think so.</p> <p>14 Q. Okay?</p> <p>15 A. And I'll try to answer that with perhaps a</p> <p>16 little bit of past practice procedure. What</p> <p>17 normally happens is if someone brings up an issue,</p> <p>18 and the Board feels that they need a new policy or</p> <p>19 they need to change a policy or whatever, it's</p> <p>20 normally handed over to the policy committee. As</p> <p>21 part of that research our Board attorney is</p> <p>22 contacted and through coordination between the</p> <p>23 policy committee and our Board attorney where drafts</p> <p>24 are made, research is done, it goes back and forth</p>	<p style="text-align: right;">95</p> <p>1 grounds committee, the athletic fields oversight</p> <p>2 committee. I have been negotiations past. I believe</p> <p>3 that's it, to the best of my knowledge.</p> <p>4 Q. I think you have in front of you PX12</p> <p>5 somewhere?</p> <p>6 A. No, I don't think so.</p> <p>7 Q. Here you go.</p> <p>8 A. Okay, thanks.</p> <p>9 Q. Have you ever seen PX12 before?</p> <p>10 A. Yes, I have.</p> <p>11 Q. At the top left of the first page in</p> <p>12 brackets it says, "For release to the general public</p> <p>13 proposed School Board Prayer Resolution," dated</p> <p>14 8/30/04. This is prepared by the Rutherford</p> <p>15 Institute and the Neuberger firm?</p> <p>16 A. Yes.</p> <p>17 Q. Do you believe that you saw this document</p> <p>18 for the first time at some point earlier than August</p> <p>19 30, 2004?</p> <p>20 A. I don't recall. I mean I don't recall</p> <p>21 specific date. I know I received this but I don't</p> <p>22 know what the date was.</p> <p>23 Q. On August 24, 2004 at the Board meeting,</p> <p>24 the Board referred the matter of the School Board</p>
<p style="text-align: right;">94</p> <p>1 and when we come -- when the policy finally comes to</p> <p>2 the Board for a first reading, we as the Board</p> <p>3 expect and assume that all the legalities have been</p> <p>4 handled and that the Board policy as it is presented</p> <p>5 for the first reading is final.</p> <p>6 Q. Final being?</p> <p>7 A. Legal.</p> <p>8 Q. You can be assured that someone has</p> <p>9 definitively advised that it's legal and</p> <p>10 constitutional?</p> <p>11 A. That is the expectation, yes.</p> <p>12 Q. Just to explore a couple of points in that,</p> <p>13 you are not on the policy committee so you are one</p> <p>14 of the people on the Board who when the policy</p> <p>15 committee emerges from that process with a new</p> <p>16 proposed policy you assume that that has been vetted</p> <p>17 for legality?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Have you ever served on the policy</p> <p>20 committee?</p> <p>21 A. No.</p> <p>22 Q. I've just forgotten, which committees are</p> <p>23 you on?</p> <p>24 A. I'm right now I'm on the building and</p>	<p style="text-align: right;">96</p> <p>1 prayer to the policy committee, do you recall that?</p> <p>2 A. I recall referring it to the policy</p> <p>3 committee, yes.</p> <p>4 Q. At the August 23 executive session the</p> <p>5 Board decided it couldn't make a decision on whether</p> <p>6 to maintain or deviate its past practice. In your</p> <p>7 case because you wanted someone to tell you</p> <p>8 definitively that the past practice was not legal or</p> <p>9 not constitutional. Dr. Hattier and Mr. Bireley</p> <p>10 testified that they were looking for additional</p> <p>11 legal advice on the issues presented by the School</p> <p>12 Board prayer problem.</p> <p>13 A. Okay.</p> <p>14 Q. My first question to you is whether it was</p> <p>15 you looking for definitive legal advice that the</p> <p>16 practice was unconstitutional, or as Dr. Hattier and</p> <p>17 Mr. Bireley said the Board was looking for</p> <p>18 additional advice on the issue of First Amendment</p> <p>19 prayer -- sorry, on the issue of in Dr. Hattier's</p> <p>20 case First Amendment issues and in Mr. Bireley's</p> <p>21 case on School Board prayer. Was someone from the</p> <p>22 Board designated to go get additional legal advice</p> <p>23 on these issues?</p> <p>24 A. I don't recall anyone being specifically</p>

<p style="text-align: right;">97</p> <p>1 designated because I remember that there were a</p> <p>2 couple of us who were checking into different</p> <p>3 organizations. Mr. Hastings had been looking on the</p> <p>4 Internet for some organizations and I think like I</p> <p>5 said I contacted two organizations ACLJ, is that the</p> <p>6 Pat Robertson?</p> <p>7 Q. I don't know.</p> <p>8 A. And the Rutherford Institute. And the</p> <p>9 Rutherford Institute was the first one who responded</p> <p>10 with the pro bono, if you will, and so I proceeded</p> <p>11 that way. I also remember receiving some</p> <p>12 information I think at some point in time from</p> <p>13 Mr. Hastings and a group that he had contacted, but</p> <p>14 I don't recall the specific group. So, was anyone</p> <p>15 designated as the point man, if you will, I don't</p> <p>16 recall that to be that way.</p> <p>17 Q. So, am I correct that several Board members</p> <p>18 were acting on their own initiative to try to get</p> <p>19 information on the issues?</p> <p>20 A. Well, I know I was.</p> <p>21 Q. All right, and you have personal knowledge</p> <p>22 that Mr. Hastings was acting on his own initiative</p> <p>23 to get some information?</p> <p>24 A. The best of my knowledge he was acting on</p>	<p style="text-align: right;">99</p> <p>1 them the particulars?</p> <p>2 A. I don't believe it was. Not to my</p> <p>3 knowledge.</p> <p>4 Q. And when you contacted the Rutherford</p> <p>5 Institute you got a reply from them you said?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Again to try to pinpoint in time, was that</p> <p>8 before or after the August 23, August 24 meetings?</p> <p>9 A. I know I look like, I don't know, I don't</p> <p>10 have a very good memory but --</p> <p>11 Q. Not at all?</p> <p>12 A. Dates are not my thing. I can't recall</p> <p>13 specifically. My wife has trouble with me as far as</p> <p>14 memory is concerned.</p> <p>15 Q. Well, let me show you, and I think you have</p> <p>16 this one in front of you, it's PX34. That would be</p> <p>17 near the bottom of the stack?</p> <p>18 A. Okay, thank you.</p> <p>19 Q. The handwriting on the first page of PX34</p> <p>20 is yours, is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And this is a fax that you sent to</p> <p>23 Mr. Walls, according to the fax line at least, on</p> <p>24 September 2, 2004 at 3:28 in the afternoon, is that</p>
<p style="text-align: right;">98</p> <p>1 his own.</p> <p>2 Q. Do you remember that Dr. Hattier was</p> <p>3 contacting an organization, something called the</p> <p>4 Alliance Defense Fund?</p> <p>5 A. I remember the Alliance Defense Fund was</p> <p>6 mentioned. I'm not sure whether it was Dr. Hattier</p> <p>7 or not, but I remember that fund, well yes.</p> <p>8 Q. You said that Mr. Hastings obtained some</p> <p>9 materials from an organization that you can't recall</p> <p>10 the name of?</p> <p>11 A. Right.</p> <p>12 Q. Did he share those materials with the</p> <p>13 Board?</p> <p>14 A. I believe he did.</p> <p>15 Q. Do you still have them?</p> <p>16 A. No, I don't.</p> <p>17 Q. Did the materials present legal advice on</p> <p>18 the issue of School Board prayer?</p> <p>19 A. No, I think it was basically Mr. Hastings</p> <p>20 had contacted them and they sent a letter back</p> <p>21 saying that they might be willing to take the case</p> <p>22 but they needed the particulars or whatever. There</p> <p>23 was no legal advice or anything like that.</p> <p>24 Q. Was that followed up on, did anyone send</p>	<p style="text-align: right;">100</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Is that your phone number 436-7576?</p> <p>4 A. That's my fax number, yes.</p> <p>5 Q. And do you recall sending this material to</p> <p>6 Mr. Walls?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Did you send it to each of the Board</p> <p>9 members?</p> <p>10 A. As I recall I don't think so, I think I</p> <p>11 just sent it to Mr. Walls, I'm not sure.</p> <p>12 Q. I hope that this will help you pinpoint the</p> <p>13 point in time when you contacted the Rutherford</p> <p>14 Institute?</p> <p>15 A. Right.</p> <p>16 Q. It had to have been before September 2nd?</p> <p>17 A. It had to have been before September 2nd.</p> <p>18 Q. Did you receive this material from the</p> <p>19 Rutherford Institute or from the Neuberger Firm?</p> <p>20 A. As I recall I received this from Mr.</p> <p>21 Neuberger.</p> <p>22 Q. And can you tell me how far in advance of</p> <p>23 your transmitting it to Mr. Walls you got it from</p> <p>24 Mr. Neuberger?</p>

<p style="text-align: right;">133</p> <p>1 can seek divine guidance for your work as a Board</p> <p>2 member is by saying a prayer out loud on the stage</p> <p>3 in the name of Jesus Christ at the Board meeting?</p> <p>4 A. No, that is not the only way.</p> <p>5 Q. You could pray for divine guidance off</p> <p>6 stage in what I guess would be the wings of the</p> <p>7 stage right before you walk on?</p> <p>8 A. Well, as I said before you can pray</p> <p>9 anywhere.</p> <p>10 Q. Or after you walk on you could offer a</p> <p>11 silent prayer in your head for divine guidance?</p> <p>12 A. Sure.</p> <p>13 Q. You could invite those present with you to</p> <p>14 join you in a moment of silence as a way of seeking</p> <p>15 divine guidance, is that correct or not correct?</p> <p>16 A. Yes, you could do that.</p> <p>17 Q. And those methods of seeking divine</p> <p>18 guidance are no more or less effective in your</p> <p>19 understanding of one's relationship with God, no</p> <p>20 more or less effective than a public prayer out loud</p> <p>21 would be?</p> <p>22 A. As I stated before I think God hears your</p> <p>23 prayers whether it's openly or privately. And the</p> <p>24 only thing I would say is that could you do it in</p>	<p style="text-align: right;">135</p> <p>1 most part.</p> <p>2 Q. And that would include regular meetings and</p> <p>3 special meetings?</p> <p>4 A. Yes.</p> <p>5 Q. And so would you describe for me how you</p> <p>6 have, if you can recall, how you have asked for</p> <p>7 divine guidance before special meetings of the</p> <p>8 Board?</p> <p>9 A. Typically we receive an agenda, and on that</p> <p>10 agenda will be certain items, and I just simply ask</p> <p>11 the Lord to help me make good sound decisions that</p> <p>12 will be for the good of the district and the staff</p> <p>13 and the students, and ask his blessings on whatever</p> <p>14 decisions are made. That type of thing.</p> <p>15 Q. And that -- because we know that public</p> <p>16 prayers are not offered at special meetings, that</p> <p>17 would be a private prayer?</p> <p>18 A. That would be private, although I would say</p> <p>19 there have been other meetings besides regular</p> <p>20 meetings that prayer has been open, the meeting has</p> <p>21 been started with an open prayer. As a matter of</p> <p>22 fact, there were several negotiation meetings where</p> <p>23 I was asked by the association on the other side of</p> <p>24 the table if I would open the meeting with prayer.</p>
<p style="text-align: right;">134</p> <p>1 the wings, yes, could you do it silently, yes, but</p> <p>2 as far as I know we're still allowed to do it</p> <p>3 openly, so if I were to choose to do it openly I</p> <p>4 hope I would continue to have the right to do so.</p> <p>5 But God would hear my prayer whether it was</p> <p>6 silent, whether it was openly, whether it was in my</p> <p>7 vehicle, or whether I was on stage. God would hear</p> <p>8 my prayer.</p> <p>9 Now, how effective the prayer is only He</p> <p>10 can determine that, but I believe He hears my prayer</p> <p>11 and answers according to His will, but I think</p> <p>12 that's why we are here. I'm certainly very hopeful</p> <p>13 that there doesn't come a time where someone says to</p> <p>14 me you cannot pray openly. I hope that never</p> <p>15 happens in this United States.</p> <p>16 Q. Everyone's memory is not perfect, but would</p> <p>17 you think it's fair to say that for every single</p> <p>18 Board meeting that you've attended as a Board member</p> <p>19 you have asked for God's help in performing your</p> <p>20 duties at that meeting?</p> <p>21 A. I would say almost every one, sure. I</p> <p>22 don't know if it would be -- like I told you</p> <p>23 yesterday I don't use words like never and all, but</p> <p>24 I would say that it's safe to say that yes for the</p>	<p style="text-align: right;">136</p> <p>1 So, there have been other meetings besides</p> <p>2 regular meetings that have been opened with prayer</p> <p>3 that I have been sitting in on --</p> <p>4 Q. Yes --</p> <p>5 A. -- but not every one.</p> <p>6 Q. Yes, sir. I was following up on your</p> <p>7 testimony and also that of Mr. Bireley and Dr.</p> <p>8 Hattier, that it is not the practice of the Board to</p> <p>9 open special meetings with a prayer, and that's</p> <p>10 correct, isn't it?</p> <p>11 A. That's correct, although over the years</p> <p>12 that I've been on there some have, but it would be</p> <p>13 out of the ordinary.</p> <p>14 Q. Yes, sir. And so setting aside the out of</p> <p>15 the ordinary special meetings where someone offered</p> <p>16 a public prayer, when you asked for divine guidance</p> <p>17 you did so privately?</p> <p>18 A. Yes.</p> <p>19 Q. Let me ask you this, before any special</p> <p>20 meeting have you ever gotten together with, just</p> <p>21 said to one or more of your fellow Board members,</p> <p>22 you know, before we start let's offer up a prayer</p> <p>23 for guidance? Not as a formal matter, but inside of</p> <p>24 purely private prayer have you invited someone to</p>

<p style="text-align: right;">137</p> <p>1 join you in a prayer?</p> <p>2 A. I don't recall any specific instances where</p> <p>3 I did, no.</p> <p>4 Q. We have, I don't know half a dozen examples</p> <p>5 of meetings at which executive sessions have</p> <p>6 occurred before the prayer to open the meeting has</p> <p>7 been offered. I don't know why that occurred, but</p> <p>8 the minutes show that there is an executive session</p> <p>9 and then the junior ROTC would offer the colors and</p> <p>10 the prayer would be offered.</p> <p>11 Am I correct that it would be your</p> <p>12 expectation that where a prayer was not offered</p> <p>13 publicly before you start the executive session, you</p> <p>14 would ask, you yourself, would ask for divine</p> <p>15 guidance for your decisions to be made in that</p> <p>16 executive session?</p> <p>17 A. I think it would be safe to say usually</p> <p>18 before any of the meetings take place that I would</p> <p>19 ask for God to help me, and to bless whatever, and</p> <p>20 that would be before any meeting, yes.</p> <p>21 Q. Okay, and so in those instances where an</p> <p>22 executive session starts before the public offering</p> <p>23 of a prayer, as with the special meetings, you would</p> <p>24 privately ask for God's help?</p>	<p style="text-align: right;">139</p> <p>1 that the Board itself, when dealing with all the</p> <p>2 important issues would certainly benefit, but</p> <p>3 ultimately if we make good sound decisions and God</p> <p>4 blesses those decisions, then ultimately everyone</p> <p>5 should benefit from it, but the policy itself was</p> <p>6 written for the Board.</p> <p>7 Q. And it was written to serve and protect the</p> <p>8 interests of the Board, is that correct?</p> <p>9 A. To serve and protect? I don't know. When</p> <p>10 I voted to accept that policy I didn't have an</p> <p>11 attitude of serve and protect in particular I think</p> <p>12 it was more -- my opinion was that it was more to</p> <p>13 serve and the more that -- it's just a policy that</p> <p>14 we say a prayer before the Board meeting to ask</p> <p>15 God's blessing and to help us. So, to protect us I</p> <p>16 don't know, that was not my attitude that it was</p> <p>17 adopted to protect us.</p> <p>18 Q. Let me just explore this a little bit?</p> <p>19 A. Okay.</p> <p>20 Q. The benefit to all of the constituents of</p> <p>21 the district that you see from Board prayer, is that</p> <p>22 your, you will make, we hope that you will make good</p> <p>23 decisions, correct?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">138</p> <p>1 A. It would be private, yes.</p> <p>2 Q. And as with my questions on the public</p> <p>3 meetings, your request, your prayer to God would be</p> <p>4 no less effective just because it was given</p> <p>5 privately and silently?</p> <p>6 A. To the best of my knowledge, like I said,</p> <p>7 whether it's effective or not only God knows that.</p> <p>8 Q. Fair enough. But as your understanding,</p> <p>9 your personal religious understanding, is that its</p> <p>10 effectiveness is not, is not affected -- its</p> <p>11 effectiveness is not affected by how it's offered?</p> <p>12 It may be affected by your state at the time it is</p> <p>13 offered, it may be affected by many things, but it's</p> <p>14 not affected by the way you offer the prayer?</p> <p>15 A. If you are speaking the way as whether it's</p> <p>16 open or private, no I don't think that makes a</p> <p>17 difference.</p> <p>18 Q. Who benefits from the Board Policy BDA.1,</p> <p>19 the School Board Prayer Policy?</p> <p>20 A. Is that the prayer policy?</p> <p>21 Q. Yes, sir.</p> <p>22 A. Okay. Who benefits?</p> <p>23 Q. Who is it intended to benefit?</p> <p>24 A. Well, specifically I think it is intended</p>	<p style="text-align: right;">140</p> <p>1 Q. That you will make decisions that are the</p> <p>2 best you can make with the assistance of God, if</p> <p>3 that's what the prayer is that's offered, correct?</p> <p>4 A. That's my opinion, yes.</p> <p>5 Q. And there was discussion at the Board</p> <p>6 level, wasn't there, that everybody benefits from</p> <p>7 good sound decisions that may be informed by God's</p> <p>8 help?</p> <p>9 A. I don't recall specific discussions but</p> <p>10 that would have been my thoughts, yes. That would</p> <p>11 be my hope and my prayer would be that everyone</p> <p>12 would benefit.</p> <p>13 Q. Don't recall that there was actually</p> <p>14 specific discussion that look everyone is going to</p> <p>15 benefit from this policy because everyone will</p> <p>16 benefit from the good decisions that will result</p> <p>17 from our asking for divine guidance?</p> <p>18 A. That may have taken place, but to sit here</p> <p>19 and say I recall that specifically, no, I can't.</p> <p>20 Like I said, that would have been my opinion. Now,</p> <p>21 if I said that specifically I don't recall, but that</p> <p>22 would certainly have been my thoughts.</p> <p>23 Q. This is something that sometimes lawyers</p> <p>24 try to do, you certainly don't recall, you don't</p>

<p style="text-align: right;">153</p> <p>1 be facetious. In the absence of the policy, if the</p> <p>2 position as you understood it of Mrs. Dobrich and</p> <p>3 the ACLU were accepted, you would remain free to</p> <p>4 stand in church or kneel in church or stand on the</p> <p>5 fairway at the golf course, or the aisle in the</p> <p>6 supermarket and pray silently or out loud in the</p> <p>7 name of a Deity or unnamed Deity or in the name of</p> <p>8 Jesus Christ, correct? The only place that anyone</p> <p>9 with suggesting that you, your right to pray as you</p> <p>10 saw fit might be limited in some way was at the</p> <p>11 School Board meeting, isn't that right?</p> <p>12 A. That is my, yes, that is my impression.</p> <p>13 Q. Okay. And it was that right that you</p> <p>14 perceived that the ACLU and Mrs. Dobrich were trying</p> <p>15 to take away?</p> <p>16 A. That's correct.</p> <p>17 Q. And it was to protect that right that you</p> <p>18 voted to adopt Board Policy BDA.1?</p> <p>19 A. Well, there again my thoughts was not to</p> <p>20 protect me or whatever, I just wanted to be allowed</p> <p>21 to continue what we'd been doing for many, many</p> <p>22 years, and that policy I felt was a good policy to</p> <p>23 ensure that.</p> <p>24 I guess it's a matter of whether you say</p>	<p style="text-align: right;">155</p> <p>1 thing they told me is that -- the only thing that I</p> <p>2 felt was coming is that they were going tell me how</p> <p>3 I could do that or maybe not so much how I could do</p> <p>4 it, but how I could not.</p> <p>5 In other words, I felt I was being told you</p> <p>6 can seek divine guidance but you can't do it openly</p> <p>7 at a School Board meeting and I just felt -- I felt</p> <p>8 that was wrong.</p> <p>9 Q. Now, you have passed, the School Board has</p> <p>10 adopted some policies that you mentioned, for</p> <p>11 example, you had to address the graduation prayer</p> <p>12 issue?</p> <p>13 A. That's correct.</p> <p>14 Q. And that policy prohibits the School Board</p> <p>15 from inviting -- well, let me just take your answer,</p> <p>16 the previous practice was not constitutional,</p> <p>17 correct?</p> <p>18 A. As I understand it when we asked our</p> <p>19 attorney to investigate it he said that our policy</p> <p>20 did not --</p> <p>21 MR. SHAW: Objection.</p> <p>22 Q. Just a second, sir. Both of us are going</p> <p>23 to -- it's important that I get your understanding.</p> <p>24 You should not tell me what your attorney told you,</p>
<p style="text-align: right;">154</p> <p>1 protect or ensure. I mean I don't know what you're</p> <p>2 looking for, but in my mind when I adopted that</p> <p>3 policy it was to let people know what we'd been</p> <p>4 doing, what we would like to continue to do, and I</p> <p>5 felt that this policy would certainly do that.</p> <p>6 But if you are asking me did I pass that</p> <p>7 policy to protect me, no, it was more like to ensure</p> <p>8 that I could continue to do what I had been doing.</p> <p>9 Q. And the benefits to the constituents of the</p> <p>10 Indian River School District that had flowed from</p> <p>11 your practice going back 30 years, the benefit of</p> <p>12 good decisions, that was going to continue whether</p> <p>13 you passed this policy or not, right?</p> <p>14 Because we know that whether you passed</p> <p>15 this policy or not and no matter what the ACLU and</p> <p>16 Mrs. Dobrich want, you were still free and your</p> <p>17 fellow Board members were still free to seek divine</p> <p>18 guidance so that the constituents of the Indian</p> <p>19 River School District would receive the benefits of</p> <p>20 your best decision?</p> <p>21 A. I would hope that would be the case.</p> <p>22 Q. Nobody has ever suggested that you weren't</p> <p>23 allowed to seek divine guidance, have they?</p> <p>24 A. Nobody has told me that, no. The only</p>	<p style="text-align: right;">156</p> <p>1 because that's a privileged communication. But I'm</p> <p>2 entitled to listen to what your understanding was,</p> <p>3 and so my question was not intended to ask you what</p> <p>4 your attorney said, my question was intended to</p> <p>5 elicit what your understanding is.</p> <p>6 A. Okay.</p> <p>7 Q. And you said before your understanding was</p> <p>8 that your previous practice on graduation, I'm just</p> <p>9 going to focus on graduation, your previous practice</p> <p>10 on graduation was not in accordance with the law?</p> <p>11 A. That's correct.</p> <p>12 Q. And so you fixed it?</p> <p>13 A. Yes.</p> <p>14 Q. And the way you fixed it would now prohibit</p> <p>15 Pastor Fike from offering the same prayer that he</p> <p>16 offered at the 2004 graduation publicly, correct?</p> <p>17 A. As I understand it, yes.</p> <p>18 Q. Do you feel that you as a Board somehow</p> <p>19 infringed by the passage of that policy on Pastor</p> <p>20 Fike's freedom to practice his faith as he wishes?</p> <p>21 MR. SHAW: I'm going to object to</p> <p>22 that question. Because we are only</p> <p>23 supposed to be discovering School Board</p> <p>24 prayer issue here. I am going to allow the</p>

<p>157</p> <p>1 witness to answer it.</p> <p>2 A. Me personal opinion was that I don't</p> <p>3 personally agree with the policy.</p> <p>4 Q. That's helpful.</p> <p>5 A. However --</p> <p>6 Q. Yes, sir, go ahead.</p> <p>7 A. -- If the policy we had was</p> <p>8 unconstitutional, then as a law abiding citizen I</p> <p>9 want to do what the court says. Personally I do not</p> <p>10 agree with it.</p> <p>11 Q. That's helpful to me, but my question was</p> <p>12 -- had to do with the impact of the policy. In</p> <p>13 passing the policy did you as a Board member believe</p> <p>14 that you were somehow limiting Pastor Fike's First</p> <p>15 Amendment right to practice his religion as he sees</p> <p>16 fit?</p> <p>17 A. Personally I believe it infringed on his,</p> <p>18 mine, and whoever else would want to come to the</p> <p>19 podium or be invited to the podium to say a prayer.</p> <p>20 Like I said, I'm a law abiding citizen, if that's</p> <p>21 what the court says then that's what I will do, but</p> <p>22 personally I do not agree with it. As I understand</p> <p>23 it the policy -- well the policy says it should be</p> <p>24 student initiated and student led.</p>	<p>159</p> <p>1 that our laws do contemplate certain limitations on</p> <p>2 one's individual right to exercise his religion and</p> <p>3 faith as he sees fit. An example is the law that</p> <p>4 prevents you, for example, from standing up at the</p> <p>5 podium at graduation and offering a prayer?</p> <p>6 A. I think some of the decisions here again</p> <p>7 it's my opinion, that some of the decisions,</p> <p>8 although well intended, sometimes limits people's</p> <p>9 rights, yes.</p> <p>10 Q. Now, you told me yesterday that you don't</p> <p>11 approve of policies that change your historical</p> <p>12 practices, or that limit people's rights unless you</p> <p>13 are satisfied with, definitively satisfied, that the</p> <p>14 law requires you to do that, correct?</p> <p>15 A. That's a little confusing, would you</p> <p>16 rephrase that?</p> <p>17 Q. I will start again. It's your view that</p> <p>18 you are not going to change a practice of the</p> <p>19 district that goes back in time, a historical</p> <p>20 practice of the district, you are not going to vote</p> <p>21 to change it unless somebody tells you definitively</p> <p>22 that it's against the law, correct?</p> <p>23 A. No. I wouldn't say I'm not going to change</p> <p>24 it, I'm saying in this issue about the prayer, that</p>
<p>158</p> <p>1 In other words, any student can come to the</p> <p>2 podium and pray. Then my personal question is</p> <p>3 what's the difference between a student coming to</p> <p>4 the podium and pray and I come to the podium and</p> <p>5 pray? The only thing is I guess the courts have</p> <p>6 addressed this and that's their ruling, and that's</p> <p>7 what I will abide by, but personally I don't agree</p> <p>8 with it.</p> <p>9 Q. Okay, but so -- and part of your answer is</p> <p>10 helpful to me in understanding your view. Your view</p> <p>11 is that the policy on prayer at graduation limits</p> <p>12 your, Mr. Helms' First Amendment rights?</p> <p>13 A. Yes, I think it limits my right to pray</p> <p>14 whatever way I want. I mean in other words, no</p> <p>15 longer can a principal or anyone say Mr. Helms would</p> <p>16 you like to come to the podium and lead us in</p> <p>17 prayer, I can't do that, according to this -- at</p> <p>18 graduation I can't do that.</p> <p>19 Q. And your understanding is that that's what</p> <p>20 the law provides?</p> <p>21 A. As I understand it has to be student led</p> <p>22 and student initiated that's my understanding. And</p> <p>23 I certainly am not a student any longer.</p> <p>24 Q. So, am I correct that your understanding is</p>	<p>160</p> <p>1 I wasn't going to change it unless someone told me,</p> <p>2 but -- and if there is other policies in our manual</p> <p>3 that are breaking the law and as we become aware of</p> <p>4 it, then yes, I want to be in compliance. Would I</p> <p>5 never change a policy unless somebody told me it was</p> <p>6 breaking the law, no.</p> <p>7 Q. Okay, you are right, my question was what</p> <p>8 we say over broad.</p> <p>9 A. Okay.</p> <p>10 Q. In this area of prayer and the exercise of</p> <p>11 religion, am I right in thinking that you would not</p> <p>12 agree to change a practice or policy of the district</p> <p>13 without being told definitively that it was against</p> <p>14 the law?</p> <p>15 A. In this specific case I did not want to</p> <p>16 stop doing what we had been doing for years simply</p> <p>17 because someone said it wasn't, you can't do it. I</p> <p>18 said I need someone higher up, if you will. In</p> <p>19 other words, my statement was I want to take it to</p> <p>20 court and let the court tell me that it's wrong.</p> <p>21 And like I said even though I don't agree with the</p> <p>22 graduation policy if that's the laws of our land</p> <p>23 then even as I took oath as being a part of the</p> <p>24 member of the Board I must abide by law and that's</p>

<p>161</p> <p>1 what I want to do.</p> <p>2 However, in this case nobody had definitely</p> <p>3 told me that what we were doing was</p> <p>4 unconstitutional, so I needed someone to tell me</p> <p>5 that before I change what we had been doing for</p> <p>6 years.</p> <p>7 Q. So, on the graduation prayer issue you were</p> <p>8 satisfied, on the Board prayer issue you have not</p> <p>9 been satisfied?</p> <p>10 A. No, not as of yet.</p> <p>11 Q. Okay. And one reason to pass the policy</p> <p>12 was so that you could get a judicial decision, get a</p> <p>13 judge to say one way or another with finality is our</p> <p>14 practice constitutional or not, isn't that correct?</p> <p>15 A. No. Like I said before, my reasoning for</p> <p>16 adopting and voting for that policy was to let</p> <p>17 people know -- there was a lot of people in our</p> <p>18 district who did not attend Board meetings and had</p> <p>19 no idea what this Board had been doing for years.</p> <p>20 So, one aspect was this was going to let people know</p> <p>21 what this Board has been doing for years, what is</p> <p>22 our history and past practice, and the other reason</p> <p>23 was that I wanted to continue to do that. That was</p> <p>24 the reason for me adopting that policy.</p>	<p>163</p> <p>1 A. My first question would be what's a FOIA</p> <p>2 request?</p> <p>3 Q. Freedom of Information Act.</p> <p>4 A. No, I was not aware of that.</p> <p>5 Q. If that were true, that would be</p> <p>6 inconsistent with your understanding of this notion</p> <p>7 of free access of the policies, correct?</p> <p>8 A. I'm not familiar with all the nuts and</p> <p>9 bolts of how it's done, but what I'm saying is I</p> <p>10 would hope if someone were to call the district</p> <p>11 office and say that I would like to see a copy of</p> <p>12 that policy that they could get it. Whatever means,</p> <p>13 if it means they have to file whatever --</p> <p>14 MR. ALLINGHAM: Let me interrupt</p> <p>15 you Mr. Helms we are going to run out of</p> <p>16 tape, I'm really sorry.</p> <p>17 A. Okay, sure.</p> <p>18 MS. DUPHILY: We are going off the</p> <p>19 record at approximately 10:04 a.m..</p> <p>20 (WHEREUPON a brief recess was</p> <p>21 taken)</p> <p>22 MS. DUPHILY: We are back on the</p> <p>23 record at 10:13 a.m..</p> <p>24 MR. ALLINGHAM: I am going to ask</p>
<p>162</p> <p>1 Q. You could have let people know what you</p> <p>2 were doing by sending a letter, couldn't you?</p> <p>3 A. Well, you could, but then being on this</p> <p>4 Board for a number of years, letters don't always</p> <p>5 make it home. You know, people are missed even by</p> <p>6 trying to send them letters or sending it home with</p> <p>7 little Jamie or little Johnny there are still those</p> <p>8 people who are missed.</p> <p>9 Q. And you think that you are going to get a</p> <p>10 broader reach by passing a policy than you are going</p> <p>11 to get by sending a letter home?</p> <p>12 A. I think this makes it available to anyone</p> <p>13 and everyone. If somebody were to call the district</p> <p>14 office today and said what's going on with the Board</p> <p>15 they could say to them they have a policy and this</p> <p>16 is our policy, and all they have to say is I want a</p> <p>17 copy of that, absolutely. But my sending a --</p> <p>18 folding that policy up and sending it to all of our</p> <p>19 constituents, you could do that, but I just never</p> <p>20 thought about doing it.</p> <p>21 Q. This is a little bit of a diversion, but</p> <p>22 are you aware that a resident of the district asked</p> <p>23 for a copy of the School Board Prayer Policy and was</p> <p>24 told by district employees to file FOIA request?</p>	<p>164</p> <p>1 the court reporter to mark as PX42 a</p> <p>2 document that has no Bates, but it's titled</p> <p>3 School Board Member Ethics.</p> <p>4 (WHEREUPON Plaintiff's Exhibit 42</p> <p>5 was marked for identification.)</p> <p>6 Q. Do you recognize what we have marked as</p> <p>7 PX42, Mr. Helms?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Have you read it?</p> <p>10 A. I have read it. Like I said yesterday, I</p> <p>11 couldn't answer to it without reading it, but I have</p> <p>12 read it before, yes. Or do you mean now?</p> <p>13 Q. No, I meant at some time in the past?</p> <p>14 A. Okay, yes, I have.</p> <p>15 Q. And you understand that the first</p> <p>16 introductory paragraph says, when it says "Members</p> <p>17 of the Board of Education will strive to attain the</p> <p>18 following Code of Ethics." This is a code of ethics</p> <p>19 that you have undertaken to strive to attain?</p> <p>20 A. Yes.</p> <p>21 Q. In paragraph one, the third, or section</p> <p>22 one, the third paragraph one of the admonitions of</p> <p>23 the Code of Ethics is, "That the public expects my</p> <p>24 first and greatest concern to be in the best</p>

<p>165</p> <p>1 interest of each and every one of these young people</p> <p>2 without distinction as to who they are or what their</p> <p>3 backgrounds may be." And have you at all times made</p> <p>4 your first and greatest concern to be the interest</p> <p>5 of the young people, the students whose education</p> <p>6 you have been entrusted with?</p> <p>7 A. I strive to do that, yes.</p> <p>8 Q. And on the second page, in the third</p> <p>9 paragraph, there is an admonition that each Board</p> <p>10 member should resist every temptation and outside</p> <p>11 pressure to use my position as a School Board member</p> <p>12 to benefit either myself or any other individual or</p> <p>13 agency apart from the total interest of the School</p> <p>14 District, do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Have you at all times, do you understand</p> <p>17 that to be your obligation?</p> <p>18 A. Yes.</p> <p>19 Q. And have you at all times strived to</p> <p>20 satisfy that obligation?</p> <p>21 A. I strive to do so, yes.</p> <p>22 Q. Just to pick up on an answer that you gave</p> <p>23 me before the break, I understood you to say, but</p> <p>24 tell me if I am wrong, that one reason that you</p>	<p>167</p> <p>1 nothing in writing on what you had been doing, was</p> <p>2 the preamble, the material before the numbered</p> <p>3 paragraphs that ultimately became the policy near</p> <p>4 the end of this document, was the preamble intended</p> <p>5 to be a description of what the Board had been doing</p> <p>6 in the past?</p> <p>7 A. The preamble, you are talking I assume page</p> <p>8 one?</p> <p>9 Q. Yeah, everything --</p> <p>10 A. All the whereases?</p> <p>11 Q. Whereas the school Board is an elected</p> <p>12 body, whereas the school Board has a long</p> <p>13 established custom, that was intended to set down in</p> <p>14 writing what the Board had been doing?</p> <p>15 A. I'm not sure. And one of the reasons is</p> <p>16 that I was not involved with preparing this</p> <p>17 document. I don't know why, I don't know the</p> <p>18 specific reason why the whereases are in there.</p> <p>19 Q. Okay.</p> <p>20 A. If you follow what I'm saying is, this was</p> <p>21 drafted by someone else.</p> <p>22 Q. Yes, sir, I understand.</p> <p>23 A. And I don't know what their intent was when</p> <p>24 they did that.</p>
<p>166</p> <p>1 passed the policy was so that the public would know</p> <p>2 that the Board intended to pray at its meetings, was</p> <p>3 that one of the purposes?</p> <p>4 A. I think the way I phrased it was that the</p> <p>5 public know what we've been doing, what the Board</p> <p>6 had been doing, and that by adopting this policy I</p> <p>7 was hoping that we could continue to do that.</p> <p>8 Q. Fair enough. So, it was both forward</p> <p>9 looking and backward looking? You wanted to tell</p> <p>10 them what you have done and you wanted to tell the</p> <p>11 public that you were going to continue to do that?</p> <p>12 A. And to clarify that, there was some</p> <p>13 discussions that we had been doing this for years</p> <p>14 but there was nothing in writing about what we had</p> <p>15 been doing, so one of the purposes or one of the</p> <p>16 things in my mind that I wanted to do was, number</p> <p>17 one, let's get it down on a document that let's</p> <p>18 people know what we've been doing and hopefully by</p> <p>19 doing that we could continue to do that in the</p> <p>20 future.</p> <p>21 So, I think that's -- I don't know if that</p> <p>22 clarifies it or not, but that was my thinking.</p> <p>23 Q. Now, PX34 that we looked at yesterday</p> <p>24 toward the end of the day. In terms of having</p>	<p>168</p> <p>1 Q. Do you know who drafted it?</p> <p>2 A. Yes.</p> <p>3 Q. Was it Mr. Neuberger or Mr. Whitehead?</p> <p>4 A. I don't know that. I know it came from the</p> <p>5 Rutherford Institute, or it may have come by way of</p> <p>6 Mr. Neuberger. I'm not sure which one.</p> <p>7 Q. So, would it be fair you know who you got</p> <p>8 it from, you don't know who drafted it?</p> <p>9 A. Right. I know where it came from, yes.</p> <p>10 Q. You told me that in adopting the policy you</p> <p>11 wanted to set down in writing what the Board had</p> <p>12 been doing in the past?</p> <p>13 A. Exactly.</p> <p>14 Q. Look at PX9, which is the actual policy,</p> <p>15 BDA.1. I'll give you a copy. Here is a copy.</p> <p>16 Would you point to me where in that policy</p> <p>17 it is set down in writing what the Board had done in</p> <p>18 the past?</p> <p>19 A. I think the document as a whole reflects</p> <p>20 what the Board had been doing in the past. In other</p> <p>21 words, if you're asking me is there a numbered item</p> <p>22 in there that says in the past the Board has been</p> <p>23 doing thus and so, no, there isn't anything in</p> <p>24 there. The policy as a whole is what we had been</p>

<p>185</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. Mrs. Dobrich or the Doe family represented</p> <p>3 by the ACLU in this case?</p> <p>4 A. That's my opinion.</p> <p>5 Q. And what's that opinion based on?</p> <p>6 A. Right now?</p> <p>7 Q. Yup.</p> <p>8 A. What I've been told.</p> <p>9 Q. By whom?</p> <p>10 A. Attorneys, friends.</p> <p>11 Q. Do you have any direct information that</p> <p>12 Mr. Horvath, Mr. Lenhard or I are representing or</p> <p>13 are affiliated with the ACLU?</p> <p>14 A. Do I have anything?</p> <p>15 Q. Yes, sir.</p> <p>16 A. No.</p> <p>17 Q. Has anybody told you that we are?</p> <p>18 A. I'm trying to recall if anybody actually</p> <p>19 told me that, or whether that was my assumption.</p> <p>20 I don't think, I don't recall anybody</p> <p>21 telling me specifically that you are members of the</p> <p>22 ACLU. I think, I recall somebody mentioning that</p> <p>23 you may be, how can I say this, I don't know what</p> <p>24 the term is, but you may be employed by the ACLU to</p>	<p>187</p> <p>1 to the ACLU, which wants to take your rights away,</p> <p>2 is that a fair statement?</p> <p>3 A. That is my opinion, yes.</p> <p>4 Q. Did you think it was import -- and you</p> <p>5 understood that that would inflame people's views</p> <p>6 about this case, didn't you? People have extreme</p> <p>7 views about the ACLU, don't they?</p> <p>8 A. I don't know.</p> <p>9 Q. Oh, Mr. Helms, come on?</p> <p>10 A. No, I would assume that would be the case,</p> <p>11 but I don't know that. I haven't had anyone come up</p> <p>12 to me, and I don't know what your word was, but what</p> <p>13 would be my word, really upset with the ACLU to the</p> <p>14 point where they say Mr. Helms we're so upset, I've</p> <p>15 not had anybody do that.</p> <p>16 Q. Let me ask you this question, when you</p> <p>17 walked into the auditorium on February 27 did you</p> <p>18 notice that there were a lot of signs being held by</p> <p>19 people in the auditorium?</p> <p>20 A. I noticed there were signs, yes.</p> <p>21 Q. Did you notice that many of them were</p> <p>22 attacks on the ACLU?</p> <p>23 A. No.</p> <p>24 Q. Really?</p>
<p>186</p> <p>1 take this case.</p> <p>2 In other words, I have heard for instance</p> <p>3 that certain attorneys make themselves available to</p> <p>4 certain organizations, and I have heard that you had</p> <p>5 made yourself available for the ACLU. Do I have any</p> <p>6 documentation, no, but I heard that.</p> <p>7 Q. Who did you hear that from?</p> <p>8 A. Attorneys.</p> <p>9 Q. Neuberger?</p> <p>10 A. Yes.</p> <p>11 Q. Did he give you a list of the cases --</p> <p>12 MR. SHAW: I'm going to object --</p> <p>13 Q. -- in which I have been affiliated with the</p> <p>14 ACLU?</p> <p>15 MR. SHAW: Mr. Neuberger</p> <p>16 represented Mr. Helms at the time and this</p> <p>17 is privy attorney/client privilege.</p> <p>18 MR. ALLINGHAM: Fine, I will</p> <p>19 withdraw the question.</p> <p>20 Q. Mr. Helms, you made a pretty big point of</p> <p>21 standing up to the ACLU at the February 27 Board</p> <p>22 meeting, in a number of articles that I can provide</p> <p>23 to you if you want, you have routinely characterized</p> <p>24 your passionate defense in this case as standing up</p>	<p>188</p> <p>1 A. Really.</p> <p>2 Q. You didn't see, for example, signs that</p> <p>3 said, Anti Christian Lawyers Union ACLU?</p> <p>4 A. If I did see it I don't recall it, it don't</p> <p>5 stick out in my mind, no.</p> <p>6 Q. That's fine?</p> <p>7 A. What was it?</p> <p>8 Q. Anti Christian Lawyers Union?</p> <p>9 A. No.</p> <p>10 Q. That's not what ACLU stands for, is it?</p> <p>11 A. I'm pretty sure it doesn't. But no, I</p> <p>12 don't recall seeing a sign like that, and it may</p> <p>13 have been there, but I don't recall.</p> <p>14 Q. Before you made repeated statements about</p> <p>15 the ACLU's control of and representation of the</p> <p>16 Plaintiffs in this case, did you make any effort to</p> <p>17 actually check whether the ACLU was driving this</p> <p>18 suit, representing the Plaintiffs or whether the</p> <p>19 Plaintiffs were represented by lawyers who were</p> <p>20 connected to the ACLU?</p> <p>21 A. If you are asking me did I call you or</p> <p>22 anyone else to verify that, no, I did not.</p> <p>23 Q. Did look at the Complaint to see whether or</p> <p>24 not the ACLU was on the Complaint?</p>

<p style="text-align: right;">193</p> <p>1 I just want to clarify. You believe that</p> <p>2 the efforts of the Does and Dobriches and of their</p> <p>3 lawyers, Messers Lenhard, Horvath and myself are a</p> <p>4 part of that ongoing campaign, am I correct?</p> <p>5 A. I believe this case is part of an ongoing</p> <p>6 campaign. Whether you're personally involved in</p> <p>7 that I don't know, but I think this case --</p> <p>8 Q. Fine, that's all I need to know.</p> <p>9 A. Okay.</p> <p>10 Q. After then two sentences down you say, "Our</p> <p>11 court case where we have been standing up to the</p> <p>12 ACLU provides the opportunity for a federal court to</p> <p>13 permanently uphold my right not to be treated as a</p> <p>14 second class citizen, or have to move to the back of</p> <p>15 the bus."</p> <p>16 A. Uh-hum.</p> <p>17 Q. When you refer to having to move to the</p> <p>18 back of the bus, did you have reference to Mrs. Rosa</p> <p>19 Parks?</p> <p>20 A. Yes.</p> <p>21 Q. And do you equate your position here with</p> <p>22 that of Mrs. Rosa Parks?</p> <p>23 A. I equate that with the position, that I</p> <p>24 feel as though some of my rights may be taken away</p>	<p style="text-align: right;">195</p> <p>1 away, yes.</p> <p>2 Q. Do you think that you are being</p> <p>3 discriminated against in the same way that</p> <p>4 Mrs. Parks was being discriminated against?</p> <p>5 A. I think I'm being discriminated against</p> <p>6 because I'm a Christian and I want to pray in Jesus'</p> <p>7 name.</p> <p>8 Q. I don't think that was my question. Do you</p> <p>9 think that you are being discriminated against in</p> <p>10 the same way as, and to the same degree that</p> <p>11 Mrs. Parks was discriminated against?</p> <p>12 A. Well, would you describe to me your opinion</p> <p>13 of same way?</p> <p>14 Q. No, sir.</p> <p>15 A. Okay, then I don't know if I can answer</p> <p>16 that question.</p> <p>17 Q. Do you believe that you are discriminated</p> <p>18 against to the same degree as Mrs. Parks?</p> <p>19 A. I really don't know how to answer that</p> <p>20 question.</p> <p>21 Q. Have you ever have been made to sit in the</p> <p>22 back of the bus because you're a Christian?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been made to drink from a</p>
<p style="text-align: right;">194</p> <p>1 or denied. And certainly I think that was her main</p> <p>2 concern that some of her rights were being violated,</p> <p>3 and so in that way, yes.</p> <p>4 Q. So your position is equivalent to that of</p> <p>5 Rosa Parks?</p> <p>6 A. I don't know if it's equivalent.</p> <p>7 Q. Why did you use the phrase, "move to the</p> <p>8 back of the bus," if you didn't think it was</p> <p>9 equivalent?</p> <p>10 A. Well, when you say equivalent, equivalent</p> <p>11 is the same weight. Some people may say that her</p> <p>12 issue is more important to them than my issue.</p> <p>13 Q. Not to you, though?</p> <p>14 A. To me my issue is very important and I also</p> <p>15 recognize that hers was important, but are they</p> <p>16 equal, that's a matter of opinion, but I think they</p> <p>17 are both having to be involved with rights being</p> <p>18 taken away from individuals or whatever. It's not</p> <p>19 whether it's equal, it's whether it's of the same</p> <p>20 nature. In other words --</p> <p>21 Q. You think that you are in the same position</p> <p>22 as Mrs. Parks was?</p> <p>23 A. I think I'm in the position that there's a</p> <p>24 possibility that some of my rights may be taken</p>	<p style="text-align: right;">196</p> <p>1 separate water fountain because you're a Christian?</p> <p>2 A. No.</p> <p>3 Q. Have you ever been made to leave a lunch</p> <p>4 counter because you're a Christian?</p> <p>5 A. No.</p> <p>6 Q. Have you ever been denied the right to vote</p> <p>7 because you're a Christian?</p> <p>8 A. No.</p> <p>9 Q. Have your children ever been -- has anyone</p> <p>10 ever sought to convert your children to another</p> <p>11 religion because you're a Christian?</p> <p>12 A. I don't know that answer.</p> <p>13 Q. Do you believe --</p> <p>14 A. Not to my knowledge, but kids don't also</p> <p>15 confide, I don't know.</p> <p>16 Q. Has anyone ever tried to convert you to a</p> <p>17 religion different than Christianity?</p> <p>18 A. Yes.</p> <p>19 Q. Has anyone ever asked you why you were a</p> <p>20 Christian?</p> <p>21 A. Yes.</p> <p>22 Q. Have you answered?</p> <p>23 A. Yes.</p> <p>24 Q. And what was your answer?</p>

<p style="text-align: right;">197</p> <p>1 A. Why am I a Christian?</p> <p>2 Q. Yes.</p> <p>3 A. Because on March 27, 1973 I was at a</p> <p>4 revival meeting and the evangelist that was</p> <p>5 preaching that night his sermon touched my heart and</p> <p>6 I went forward and gave my heart to Jesus, and</p> <p>7 that's why I'm a Christian.</p> <p>8 Q. And before March 27 what religion were you?</p> <p>9 A. I had attended a Methodist church when I</p> <p>10 was younger, but I don't know if I had any -- I</p> <p>11 wasn't a Christian before March 27, 1973.</p> <p>12 Q. Anybody ever turn a fire hose or police</p> <p>13 dogs on you because you're a Christian?</p> <p>14 A. No.</p> <p>15 Q. Has anyone ever suggested that you could</p> <p>16 disappear because you're a Christian?</p> <p>17 A. To me?</p> <p>18 Q. Yeah.</p> <p>19 A. No.</p> <p>20 Q. Now, I know these words were not written by</p> <p>21 you, but do you think that for you to equate your</p> <p>22 position with Rosa Parks was a little over the top?</p> <p>23 A. No.</p> <p>24 Q. You think it was an exactly apt comparison?</p>	<p style="text-align: right;">199</p> <p>1 Q. That's not what this lawsuit is about, is</p> <p>2 it Mr. Helms?</p> <p>3 A. I know, I know, but I'm just saying, you</p> <p>4 asked me several times about are these things</p> <p>5 happening to me and no they're not, but the</p> <p>6 potential is there because it is happening in other</p> <p>7 places.</p> <p>8 Q. I am going to ask one more question then</p> <p>9 I'm going to go to a new topic?</p> <p>10 A. Okay.</p> <p>11 Q. Do you think that the comparison of</p> <p>12 Reginald Helms, a white man from Sussex County,</p> <p>13 Delaware, to Rosa Parks, a black woman in the south</p> <p>14 in the late '50s is an apt comparison?</p> <p>15 A. I don't know how to answer that question.</p> <p>16 In my mind it's not equal, but it is the same.</p> <p>17 That's the best I can come, because I think it's a</p> <p>18 matter of rights and although I haven't been fire</p> <p>19 hosed, beaten or whatever, it's to me, my opinion,</p> <p>20 it's a matter of rights.</p> <p>21 Q. I gave you a list of six Board meetings</p> <p>22 that since the adoption of the prayer policy, at</p> <p>23 which you gave the prayer, in each of those cases</p> <p>24 did you pray in the name of Jesus?</p>
<p style="text-align: right;">198</p> <p>1 A. No.</p> <p>2 Q. Well, do you think it was an apt</p> <p>3 comparison?</p> <p>4 A. I think in my mind the comparison that she</p> <p>5 had rights taken away from her, and there was a</p> <p>6 potential that I was going to have rights taken away</p> <p>7 from me. That's how I equate myself to Miss Parks.</p> <p>8 Q. All right --</p> <p>9 A. To me it's a matter of rights being</p> <p>10 withheld, taken away, and in my case it was the</p> <p>11 potential of that happening.</p> <p>12 At this moment as we are sitting here right</p> <p>13 now, as far as I know I have the right to pray when,</p> <p>14 where and however I wish. However, I feel as though</p> <p>15 that right may be in jeopardy.</p> <p>16 Q. Mrs. Parks rights weren't in jeopardy, they</p> <p>17 had been taken away, hadn't they?</p> <p>18 A. I think she was denied some rights, yes.</p> <p>19 Q. Mrs. Parks was being discriminated against?</p> <p>20 A. Okay, yes.</p> <p>21 Q. You're not being discriminated against, are</p> <p>22 you?</p> <p>23 A. I am not, but there are Christians</p> <p>24 throughout this nation and world that are.</p>	<p style="text-align: right;">200</p> <p>1 A. Yes.</p> <p>2 Q. In each of those cases you knew that</p> <p>3 students were there?</p> <p>4 A. Yes.</p> <p>5 Q. You had no idea whether those students were</p> <p>6 all Christian or of other faiths, isn't that</p> <p>7 correct?</p> <p>8 A. No.</p> <p>9 Q. You didn't know if they were Muslim or</p> <p>10 Jewish or Agnostic or atheist or whatever?</p> <p>11 A. No.</p> <p>12 Q. And for the purposes of your position in</p> <p>13 this case it doesn't matter, isn't that right?</p> <p>14 A. It doesn't matter?</p> <p>15 Q. Yes.</p> <p>16 A. I wouldn't say it doesn't matter.</p> <p>17 Q. Well, explain to me how it matters whether</p> <p>18 the students in the audience are Christian or Muslim</p> <p>19 or Agnostic or Jewish for purposes of the</p> <p>20 infringement of your rights?</p> <p>21 A. I guess I just have a -- I'm having a hard</p> <p>22 time to understand what your question is. Could you</p> <p>23 ask it again?</p> <p>24 Q. Sure. It didn't matter whether all of the</p>

<p style="text-align: right;">201</p> <p>1 students are Christian or all the students are</p> <p>2 atheist, for purposes of determining whether or not</p> <p>3 your rights to pray as you wish are being</p> <p>4 compromised, or you are being discriminated against,</p> <p>5 does it? The audience doesn't matter, it's you that</p> <p>6 matters?</p> <p>7 A. I wouldn't say that, I have respect for all</p> <p>8 people. I would hope they would have respect for</p> <p>9 me. So when you say does it matter, everyone</p> <p>10 matters. But I just simply wasn't to be able to pray</p> <p>11 the way that I have always prayed since I've been a</p> <p>12 Christian.</p> <p>13 And if they want to pray, if they are in a</p> <p>14 position that they are all called to pray, or they</p> <p>15 want to pray, then whatever way they want to pray is</p> <p>16 fine. I may not necessarily agree with it, but it's</p> <p>17 fine.</p> <p>18 Q. If you offered a prayer and a student</p> <p>19 walked to the podium said I would like to offer a</p> <p>20 prayer, too, what would you do?</p> <p>21 A. What would I do?</p> <p>22 Q. Yeah.</p> <p>23 A. I don't know. That's an honest answer --</p> <p>24 Q. All right let's say that -- I'm sorry,</p>	<p style="text-align: right;">203</p> <p>1 individual has two minutes to express themselves in</p> <p>2 whatever way, maybe that would be the appropriate</p> <p>3 time. But you know, and handle it that kind of way.</p> <p>4 Q. Isn't the public comment section limited to</p> <p>5 matters of Board business?</p> <p>6 A. As far as I know public comment is public</p> <p>7 comment. It could be -- now you would hope someone</p> <p>8 wouldn't come to the podium in a School Board</p> <p>9 meeting and start talking about what happened at the</p> <p>10 Food Lion. However, we don't tell them what they</p> <p>11 can talk about and we don't limit them except the</p> <p>12 policy like we talked about before as far as getting</p> <p>13 into personalities, bargaining unit types of things.</p> <p>14 There are limitations there, but we don't tell</p> <p>15 anyone what to speak about and we don't say you can</p> <p>16 only talk about School Board issues.</p> <p>17 I've never heard anyone say, to the best of</p> <p>18 my knowledge, I have never heard any president tell</p> <p>19 someone you can only talk about this issue and you</p> <p>20 can't talk about that. I've never heard that. I</p> <p>21 would assume everybody knows we are there about</p> <p>22 School Board business.</p> <p>23 However, if a student came up and says I</p> <p>24 want to offer a prayer, I would hope we would handle</p>
<p style="text-align: right;">202</p> <p>1 excuse me, I interrupted, I don't like to do that.</p> <p>2 A. I don't know how I would act in that</p> <p>3 situation until presented to that. I would hope, I</p> <p>4 would hope that I would be respectful, but I don't</p> <p>5 know what I would do.</p> <p>6 Q. Well, let me pose a different hypothetical.</p> <p>7 Suppose there were 35 students in the audience and</p> <p>8 each of them one after another walked to the podium</p> <p>9 and said I'd like to offer a prayer, and the Board</p> <p>10 members began to look at their watches and said</p> <p>11 something's got to be done here, and at some point</p> <p>12 it's true, is it not that maybe the first person you</p> <p>13 wouldn't say sorry we have got to get on with our</p> <p>14 business, but at some point, we can both agree,</p> <p>15 can't we, Mr. Helms, that you'd say look I have</p> <p>16 enormous respect for your religion and I think it's</p> <p>17 wonderful that you're anxious to invoke divine</p> <p>18 guidance but we have got to get to the business at</p> <p>19 hand?</p> <p>20 A. Well, I'm sitting here thinking as</p> <p>21 presented with this, one way it might possibly be</p> <p>22 handled is to say we have a public comment section</p> <p>23 coming up and if you wish to come to the podium and</p> <p>24 present a prayer we set aside 15 minutes and each</p>	<p style="text-align: right;">204</p> <p>1 it respectfully and say well, we have a public</p> <p>2 comment section and as an individual you have two</p> <p>3 minutes, and you say whatever you want to say,</p> <p>4 within the guidelines of our policy.</p> <p>5 In other words, they couldn't bad mouth a</p> <p>6 teacher by name, that sort of thing.</p> <p>7 Q. Doesn't the Constitution guarantee the</p> <p>8 right to say whatever you want?</p> <p>9 A. Well, I think I'm not that familiar with</p> <p>10 the Constitution law --</p> <p>11 MR. ALLINGHAM: That's a legal</p> <p>12 question, I will withdraw it.</p> <p>13 MS.DUPHILY: We are going off the</p> <p>14 record at approximately 11:10 a.m..</p> <p>15 (WHEREUPON a brief recess was</p> <p>16 taken)</p> <p>17 MS. DUPHILY: We are back on the</p> <p>18 record at approximately 11:11 a.m..</p> <p>19 Q. As a School Board member you want this</p> <p>20 School Board prayer issue to be decided by the</p> <p>21 courts don't you?</p> <p>22 A. My opinion, yes.</p> <p>23 Q. Do you know who the Does are?</p> <p>24 A. No, I don't.</p>

<p style="text-align: right;">205</p> <p>1 Q. Has anyone told you who they think the Does 2 are? 3 A. I don't recall that, although I have had 4 some people say to me they think they know who they 5 are. But I don't recall anybody telling me 6 specifically who they were. But if they did, I 7 don't remember. 8 Q. I take it you have done nothing to counter 9 what people conjecture about, have you? 10 A. If you are asking me if it's important for 11 me to know who they are, it's not important to me 12 who they are. If they want to remain anonymous 13 that's fine. We had some discussion about should we 14 know who they are, and some people think we should 15 know, but to me I would like to know, but it's not 16 that big a deal to me. So, I have not made any 17 conscious effort to find out who they are. 18 Q. Do you recall who told you they thought 19 they knew who the Does were? 20 A. I believe as I recall I think Mrs. Hobbs 21 may have said she thought she knew who they were, I 22 think Dr. Hattier said he knew who -- he thought, he 23 thought he knew who they were and maybe Mr. Darling, 24 but again I'm not 100 percent sure. But no, do I</p>	<p style="text-align: right;">207</p> <p>1 Q. In this case am I correct that you did not 2 ask Mr. Griffin to draft a School Board Prayer 3 Policy? 4 A. I'm not sure whether we asked him or not. 5 I don't recall. 6 Q. Are you aware of any alternative draft 7 School Board Prayer Policy that was provided by 8 anyone to the Board members? 9 A. I am aware of the policy that I sent to 10 Mr. Walls, I'm aware of that. 11 Q. It's one that you have in front of you? 12 A. Yes, that's correct. 13 Q. And you understand that that one has the 14 policy that was ultimately adopted as part of it? 15 A. Yes. 16 Q. When you sent PX34 to Mr. Walls that's the 17 document that you have right there? 18 A. Yes. 19 Q. Did you send it to him thinking in your 20 mind that it was an example of a School Board Prayer 21 Policy? 22 A. I sent him the fax to say here is what I 23 have received and to consider this. And I guess I 24 can't, I could have thought that this is one example</p>
<p style="text-align: right;">206</p> <p>1 know Mrs. Hobbs knows, she could, and Dr. Hattier 2 said he thought he knew, whether Mr. Bireley said it 3 or not, I think he did, but I'm not 100 percent 4 sure. 5 Q. Whoever said, though, that they knew who 6 the Does were, they didn't tell you who they thought 7 the Does were? 8 A. I don't recall that, but if they did I 9 can't give you a name, I don't know who they are. 10 Q. This is the Southern Delaware School of the 11 Arts, and you have to audition to be admitted into 12 the school? 13 A. I believe that to be true. 14 Q. Does the Board have anything to do with the 15 scheduling of those auditions? 16 A. To the best of my knowledge, no. 17 Q. Yesterday you told me that typically where 18 the Board concludes that a matter is appropriate for 19 treatment by a policy that it's appropriate to pass 20 a policy on an issue, what typically they do is 21 refer the matter to the policy committee and ask the 22 Board's attorney to draft a policy, do you remember 23 that testimony? 24 A. Yes.</p>	<p style="text-align: right;">208</p> <p>1 of a possible policy, but I don't recall my exact 2 thoughts. But I did send it to him with the intent 3 that it was pretty important to looking it over and 4 see what he thought. 5 Q. Was there any discussion at any time that 6 you are aware of about whether to adopt simply the 7 five numbered paragraphs at the end of PX34 or the 8 longer document that you had sent to Mr. Walls? 9 A. I seem to recall a discussion about the 10 document as we see here being entirely too lengthy. 11 I do recall that discussion. 12 Q. And who said that? 13 A. I want say it was Mr. Walls as being chair 14 person of the policy committee. I'm not 100 percent 15 sure, but as I recall I think it may have been 16 Mr. Walls saying that it was too lengthy. 17 Q. Did he say that to you? 18 A. I think he said it to the entire Board as I 19 recall, I think that's where it was. 20 Q. Was that in response to someone asking what 21 happened to the longer version that we received from 22 Mr. Helms? 23 A. I can't recall the specifics. I don't 24 recall a question of that, but I don't know. It</p>

<p>213</p> <p>1 lawsuit was filed?</p> <p>2 MR. SHAW: Do you have an extra</p> <p>3 copy of that?</p> <p>4 MR. ALLINGHAM: I have masked out</p> <p>5 the name at the bottom and I ask that you</p> <p>6 do not take the mask off.</p> <p>7 A. I don't recall receiving this letter.</p> <p>8 Q. Thank you. Do you recall at or about the</p> <p>9 time of its date, October 1, 2004, being informed</p> <p>10 that a complaint -- being informed of the substance</p> <p>11 of a complaint like that?</p> <p>12 A. No. You mean by Mrs. Hobbs?</p> <p>13 Q. Mrs. Hobbs or anybody?</p> <p>14 A. I don't recall that. She may have but I</p> <p>15 don't recall that.</p> <p>16 Q. Thank you, may I have it back, please?</p> <p>17 A. Sure.</p> <p>18 Q. The next three or four questions have to do</p> <p>19 with contacts with voters or residents of your</p> <p>20 district. Has any of your constituents told you</p> <p>21 that they see this case as about protecting</p> <p>22 Christian prayer?</p> <p>23 A. Yes.</p> <p>24 Q. How many, and again I'm looking for</p>	<p>215</p> <p>1 program and I believe that that was one of the</p> <p>2 topics that people were calling in and asking, and I</p> <p>3 heard that what was told to me was Miss Wilson's</p> <p>4 comments were not very good. Now, whether she</p> <p>5 campaigned on that issue or not I'm not sure, but</p> <p>6 that's the only one I'm aware of that even mentioned</p> <p>7 it during the elections.</p> <p>8 Q. Have you ever told anyone that you view the</p> <p>9 ACLU as anti-Christian?</p> <p>10 A. No.</p> <p>11 Q. All right, look at PX9, that's the Board</p> <p>12 Prayer Policy?</p> <p>13 A. Okay.</p> <p>14 Q. And you will see that paragraph three</p> <p>15 reads, "Such opportunity shall not be used or</p> <p>16 exploited to proselytize, advance or convert anyone</p> <p>17 or to derogate or otherwise disparage any particular</p> <p>18 faith or belief."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And that's something that you believe in as</p> <p>22 a Board member?</p> <p>23 A. Right. Our -- may I clarify that?</p> <p>24 Q. Yes.</p>
<p>214</p> <p>1 ballparks here?</p> <p>2 A. 25 to 50, somewhere in there.</p> <p>3 Q. Has anyone ever told you that they see this</p> <p>4 case as about protecting Christian values?</p> <p>5 A. No.</p> <p>6 Q. Has anyone ever told you that they see</p> <p>7 this, the School Board's Prayer Policy, as</p> <p>8 protecting Christian values?</p> <p>9 A. No.</p> <p>10 Q. Has anyone ever told that they see the</p> <p>11 School Board's prayer policy as promoting</p> <p>12 Christianity?</p> <p>13 A. No.</p> <p>14 Q. Has anyone ever told you that they see the</p> <p>15 School Board's prayer policy as protecting Christian</p> <p>16 prayer?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know if any School Board member has</p> <p>19 campaigned for election or reelection on the ground</p> <p>20 that they support School Board prayer?</p> <p>21 A. Only hearsay.</p> <p>22 Q. What was the hearsay?</p> <p>23 A. I didn't hear the WGND broadcast, but I</p> <p>24 understand that Mr. Bireley and Miss Wilson was on a</p>	<p>216</p> <p>1 A. Our Board meetings are not supposed to be</p> <p>2 evangelistic meetings or --</p> <p>3 Q. We can all agree on that?</p> <p>4 A. Right. I don't know what the Muslims call</p> <p>5 their, but this is for School Board business and</p> <p>6 it's not intended to be a church meeting or anything</p> <p>7 of that nature.</p> <p>8 Q. Okay, I'm going to give you three examples</p> <p>9 of a prayer one by one, and I'm going to ask you</p> <p>10 whether in your view interpreting paragraph three of</p> <p>11 the Board Prayer Policy you would view them as</p> <p>12 prohibited by paragraph three or permitted under</p> <p>13 paragraph three, okay?</p> <p>14 A. Yes.</p> <p>15 Q. The first one has previously been marked as</p> <p>16 Plaintiff's Exhibit 35. Can you read over Mr. Helms'</p> <p>17 shoulder or do you have a copy?</p> <p>18 MR. SHAW: I have a copy.</p> <p>19 Q. And so the record is clear the prayer is as</p> <p>20 follows, Mr. Helms, but follow along with me. Do</p> <p>21 not put your trust in princes, in mortal men who</p> <p>22 cannot even save themselves. When their spirit</p> <p>23 departs they return to the ground. On that very day</p> <p>24 their plans come to nothing. Blessed is he whose</p>

<p style="text-align: right;">221</p> <p>1 think you are stepping over the bounds.</p> <p>2 To someone else it's a matter of opinion.</p> <p>3 They may have been, for instance the prayer that you</p> <p>4 led off with Allah, someone may have been feeling</p> <p>5 that hey are they trying to impose the, whatever</p> <p>6 that is Muslim belief on us, or whatever, I would</p> <p>7 not.</p> <p>8 Q. Okay, I'm only looking for your</p> <p>9 interpretation as a Board member?</p> <p>10 A. I think you step over the line when in your</p> <p>11 prayer you may include something like and all the</p> <p>12 heathens sitting out in the audience need to bow</p> <p>13 down and accept whatever. I think you may be</p> <p>14 stepping over the bound. I don't know that, but in</p> <p>15 my mind I would say I don't know if I would say that</p> <p>16 or not.</p> <p>17 Q. Well, let me just explore that a little</p> <p>18 bit, if I am may. If, I will make Dr. Hattier the</p> <p>19 villain in this case, I don't mean villain, you know</p> <p>20 what I mean by villain, the example. If Dr. Hattier</p> <p>21 offered a prayer in which he said at the end of the</p> <p>22 prayer, and I pray that the heathen in the audience</p> <p>23 recognize the error of their ways and come to Jesus</p> <p>24 so that they may join his children in heaven. My</p>	<p style="text-align: right;">223</p> <p>1 in this policy would provide a mechanism for a</p> <p>2 determination to be made that a prayer -- that a</p> <p>3 prayer which is offered would violate paragraph</p> <p>4 three in advance?</p> <p>5 A. Could you explain that question?</p> <p>6 Q. Yeah. There is a mechanism in the policy</p> <p>7 which if Dr. Hattier, poor Dr. Hattier, if Dr.</p> <p>8 Hattier had a piece of paper with that evangelical</p> <p>9 prayer that we have been talking about in his hand</p> <p>10 and he sits down at the table on the stage and</p> <p>11 Mr. Bireley says would you like to give a prayer, to</p> <p>12 open the meeting with a prayer Dr. Hattier, there is</p> <p>13 no mechanism for you, of any Board member, to have</p> <p>14 determined whether the prayer on the piece of paper</p> <p>15 Dr. Hattier holds is violative of paragraph three or</p> <p>16 not, is there?</p> <p>17 A. I think I understand your question and I</p> <p>18 would say no, there is no stipulation that says you</p> <p>19 have to submit your prayer beforehand or someone</p> <p>20 needs to review that and make corrections, no, there</p> <p>21 is no stipulation.</p> <p>22 Q. And if Dr. Hattier or any other Board</p> <p>23 member delivered a prayer that was sufficiently</p> <p>24 evangelical that you and your colleagues would</p>
<p style="text-align: right;">222</p> <p>1 question to you is, that's a prayer that you would</p> <p>2 view as violative of paragraph three?</p> <p>3 A. I would view that as a prayer that is very</p> <p>4 dangerously on the edge, and I would need someone --</p> <p>5 see, to me there is a difference between what is</p> <p>6 lawful -- in other words, someone would have to tell</p> <p>7 me whether that lawfully broke the policy. However,</p> <p>8 in my mind I would say I would not say that, and I</p> <p>9 don't know that I would, but perhaps I may say</p> <p>10 something to Dr. Hattier in the form of you know Dr.</p> <p>11 Hattier that might be dangerously close. That's</p> <p>12 something I wouldn't do.</p> <p>13 Q. Yes, sir. That raises a couple of more</p> <p>14 questions. If you viewed a prayer in your judgment</p> <p>15 as a Board member, because you are charged with</p> <p>16 enforcing this policy, correct?</p> <p>17 A. Right.</p> <p>18 Q. If you viewed a prayer offered by one of</p> <p>19 your colleagues as violating paragraph three what</p> <p>20 would you do?</p> <p>21 A. I would wait till the appropriate time and</p> <p>22 I see that as executive session or whatever, and I</p> <p>23 would like to talk about it.</p> <p>24 Q. It is fair to say, is it not, that nothing</p>	<p style="text-align: right;">224</p> <p>1 believe it was prohibited by paragraph three, there</p> <p>2 is no provision for punishment of that Board member</p> <p>3 for violating the policy, is there?</p> <p>4 A. Yes and no.</p> <p>5 Q. Tell me what you mean by yes and no?</p> <p>6 A. Okay. I would say yes there is a provision</p> <p>7 number one if the president felt that they were</p> <p>8 stepping over the line they have the opportunity to</p> <p>9 step in and ask Dr. Hattier to cease. And is there</p> <p>10 no punishment, I would say I don't know. During the</p> <p>11 discussions in executive session I don't know if</p> <p>12 there would be any punishment. We are certainly not</p> <p>13 going to sentence him to jail, or we couldn't</p> <p>14 suspend him from the job because it's not a job, so</p> <p>15 there may be some punishment if you will, to the</p> <p>16 extent we would appreciate it if you didn't do that</p> <p>17 again. Someone may consider that to be punishment,</p> <p>18 I don't know.</p> <p>19 But there are opportunities to step in if</p> <p>20 someone is out of line. The president has that</p> <p>21 responsibility, but also in executive session there</p> <p>22 are discussions that can be had to try to, you know,</p> <p>23 straighten that sort of thing out.</p> <p>24 Q. Yes, sir. Where ever the line is drawn,</p>